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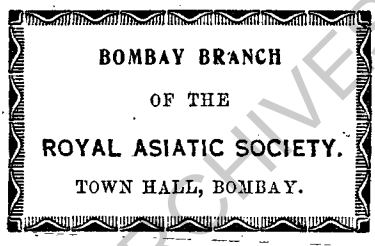

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VILLAGES

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AN ATTEMPT TOWARDS THE BETTER UNDERSTANDING OF VILLAGE CUSTOMS IN INDIA.

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BY

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INTRODUCTORY.

IF there is one principle more than another which seems to dominate the age in which we live it is that all the appearances of the physical and social world are the results of slow and gradual development. In the science of Geology we see the most eminent men explaining the existence of continents and seas, of hills and valleys, by reference to the operation of causes similar to those which are now at work. They indicate the strata of the earth and assign to each its date and its order of succession; they discover the conditions under which strata have been formed and point to causes now at work which are silently producing new strata; to the vast beds of chalk which are being deposited in the bed of the Atlantic by the tiniest of insects; to the coral reefs of the Pacific which are fast forming a continent in that expanse of sea; to the gradual sinking of parts of the old continent such as the coast of Sweden and to the rising of other parts such as the country about Guzarat. Astronomers tell how the poles of the earth are not fixed points but change imperceptibly through vast periods of time; that what are now the tropics were at one time the abode of snow and Geologists confirm this statement by pointing to fossils in Europe and in Siberia which prove that the climate of the north was at one time tropical. Zoologists teach that there is an intimate connection between the earliest germ and the most finished product of nature which may be traced through a series of nicely graduated improvements, and man recognises in himself but a link in the chain of endless development. In a more restricted province of research the materials for building up a history of Man after he has become a social being are being rapidly accumulated. The science of language has enabled us to decide with certainty that European Nations are descended from an Aryan stock which includes the Hindus of the higher classes. Ethnologists declare that the Hindu and the European are of the Caucasian type, distinct from the Turanian and the African. The fairy tales of our childhood even seem to possess a family likeness from the Ganges to the Thames, while a comparison of the vestiges of

NATIONAL ARCHIVES OF INDIA

Germanic usage are found to be identical with the existing customs of the Hindus, and modern European institutions are shewn to be developments of Aryan Germs.

PATRIARCHAL FAMILIES.

The earliest form of Society of which we are cognisant appears to be the Patriarchal State. The customs of the Todas in Southern India among whom one woman has many husbands, and of some other tribes in India and America, appear to suggest a still earlier form of society in which the bond of union was viewed in a different way to the Patriarchal, but our knowledge of those customs is so scanty that no general principle can yet be laid down concerning them and they may be explained as modifications of the Patriarchal system caused by outward pressure. The remnant of a nearly exterminated tribe might escape into the Forests with perhaps but one or two women. These would naturally acquire a preponderating influence and they might in time acquire a right, as it were, to favor more individuals than one and the practice might easily harden into custom. The custom of the Ners in Malabar of confining the inheritance to female children to the exclusion of the Males is akin to the Toda custom and might be accounted for on the supposition of a period of society when women were of more importance than men, which would presuppose them to be few in number. McCleland's researches into these customs are extremely interesting, but they require to be supplemented.

CHIEFTAINS.

But assuming the Patriarchal system to be the earliest, its form seems to have been that of a collection of families with their flocks and herds under the power of a single chief whose authority was absolute even to the power of life and death over every member of the community. We read of Abraham offering up his son Isaac and the implicit obedience of the son to whom it never occurs to question the power of the father to destroy his life. Under the chief all were upon a level of equality. To this day among the Wanjaris and other wandering tribes in India it is impossibe to distinguish a servant or slave from the son of the chief. They dress much the same and eat the same food, the chief being distinguishable only by his staff or by being a little better dressed. On the death of the Patriarch the manner of filling the vacancy would naturally be by the election of the one most fitted among the tribe to conduct the little community in its wanderings and to negotiate with other tribes and who by his personal

NATIONAL ARCHIVES OF INDIA

character would secure the greatest respect from his own men. In England we are so accustomed to the practice of primogeniture as the one rule of succession that we forget it is comparatively modern and is the result of causes which had their origin in the middle ages. It is not the rule in continental Europe and is hardly observed out of England. A community which requires to be led, to be protected from attack and to have an authority for the settlement of disputes would not be likely to hit upon primogeniture as a Rule, for this would often expose it to the inconvenience of being governed by a boy.

The chief of the tribe although naturally an elective office would in fact often descend to a son or descendant of the late chief who being more or less constantly about the person of the chief would learn from him the traditional rules for the government of the tribe and who would thus be marked out as the fittest successor to the office. The office would therefore have a tendency to become hereditary and we can find traces of the power which the chief gradually assumed to nominate his successor. The manner of doing it was apparently public and the nomination irrevocable for we find Isaac *blessing* Jacob and *kissing* him and repeating what are evidently the operative words of the nomination "Be Lord over thy brother and let thy mother's sons bow down to thee; cursed be every one that curseth thee and blessed he that blesseth thee." This is not merely an affectionate leave taking by the dying father, for when Isaac became aware that he had been deceived he trembled and cried he had blessed Jacob and when Esau asked that he might be blessed also Isaac replied "Thy brother came with subtlety and hath taken away thy blessing." The blessing was in fact the form of nominating the successor to the dominion of the tribe.

ROMAN FAMILIES.

The same power of the chief survives in the power of the father of the family or chief of the house after the tribes have ceased to wander and have settled down into villages. It is clearly discernible and is identical with the Patria Potestas of the Romans. The Roman father had power to scourge and to put his son or his slave to death; he could sell his son into slavery, and this practice must have been common for we find a Roman Law enacting that a son who had been sold three times into slavery by his father was emancipated and freed from his further control. The father could dispose of a daughter in marriage and obtain the bride price; he could provide a wife for his

NATIONAL ARCHIVES OF INDIA

son. He could give the son away for adoption into another family and the earnings of the son belonged to the father so long as he was under power that is as long as his father lived and he had not been emancipated. On the approach of death the father made his will not in the sense in which we now understand it, but a formal ceremony by which the successor to his powers was nominated. It was not a distribution of property among the several members of the family but a proceeding by which all the rights and duties vested in the father as the head of a house were transferred to a particular person. The form used was an imitation of a sale "the Testator was the Grantor, the five witnesses and the Libripens (the man who weighed the money) were present, and the place of grantee was taken by a person known technically as the familiae emptor, the purchaser of the family. The ordinary ceremony of a Mancipation was then proceeded with; certain formal gestures were made and sentences pronounced. The Emptor familiae simulated the payment of a price by striking the scales with a piece of money and finally the Testator ratified what had been done in a set form of words called the Nuncupatio or publication of the transaction. It is necessary to attend particularly to the character of the person called familiæ emptor. There is no doubt that at first he was the heir himself—the testator conveyed to him outright his whole familia, that is all the rights he enjoyed over and through the family; his property, his slaves, and all his ancestral privileges together on the other hand with all his duties and obligations."*

GERMAN FAMILIES.

Passing from the Romans to the Germans we find the power of the father thus described as the result of Von Maurer's conclusions. "Each family in the Township was governed by its own free head or pater familias. The precinct of the family dwelling house could be entered by nobody but himself and those under his patria potestas not even by officers of the law for he himself made law within and enforced law made without."† This inviolability of the house is reproduced among the Riparian Franks where we find it to be an early usage that when a legal distress was made upon a man's goods the house holder went through the significant formality of standing at his door with a drawn sword before he made submission. Kemble in his

* Mayne's Early History of Institutions, p. 205. † Village communities, p. 73.

NATIONAL ARCHIVES OF INDIA

"Anglo Saxons" describes the freeman as the owner of land, all others, including their wives and sons, were unfree, their status was that *of* slaves. The slave was the chattel of his master and his life could be taken with impunity. A man could sell himself or his children into slavery to avoid starvation. Cæsar plainly found the Celts of the continent polygamous, living in families held together by stringent Paternal power. He a Roman familias with a Patria Potestas as yet undecayed thinks it worthy of remark that the head of a gallic household had the power of life and death over his wives as well as his children, and notices with astonishment that when a husband died under suspicious circumstances his wives were treated with the same cruelty as a body of household slaves at Rome whose master had been killed by an unknown hand.

HINDU FAMILIES.

The power of the head of a Hindu joint family at the present day is singularly the same as the Patria Potestas of the Romans. It is true he may not put any of the family to death unless the practice of female infanticide is taken as an indication of a survival of this power, but he may chastise the children, and even an adult member of the family would admit that his elder brother as the head of the family had a right to beat him and that it was improper in him to resist. Children could be sold into slavery in times of scarcity and sons may be given away for adoption into other families. The father must find a wife for his son and a husband for his daughter. The practice of depositing children with a creditor as security for the repayment of a debt appears to have been very common, and in default of payment the children became the slaves of the creditor. This is an early form of hostage. A Hindu father may sell his son and that this practice is common especially in seasons of distress is undeniable. The head only has the right to deal with the family property and the members can acquire no separate property but must bring it into the common fund. On the death of the head "whichever of the sons is the most conversant with business is the proper one to interfere on the occasion; not primogeniture but capacity being for the purpose considered as affording the best rule in a family, though other things being equal the elder has undoubtedly the better title."* But the succession to the headship or management must be with the concurrence of the family without which any dealings with the family property would be invalid.

* Strange Hindu Law, p. 184.

NATIONAL ARCHIVES OF INDIA

EXTERMINATION OF THE CONQUERED.

The striking likeness between the customs of the Hindus and the customs of the Romans in the days of the Republic points to a common origin. The Hindus have apparently remained stationary or have changed but little for many ages; the Romans advanced rapidly. Their conquests and the necessities of government forced them to take notice of the customs and usages of the peoples under their dominion. With accumulating experience they began to compare, to criticise and to judge; they gradually recognized certain principles as running through and being common to the customs of many nations and formed to themselves an ideal standard of excellence to which law and custom should conform. To this compound of general principles and ideal excellence they gave the name of the law of nations and they did not hesitate to legislate and to change the customs of all nations whom they governed and oblige them to conform to their ideas of excellence. By these daring innovations the customs of the Franks, Goths, and partly of the ancient Britains, were obliterated and the law and custom of Rome became the law and custom of the Empire. The Hindus do not ever appear to have been a conquering nation, but the remnants of ancient tribes, such as the Bheels and Sonthals and generally the hill and forest tribes who are not of the Aryan stock, indicate that at some distant time the Aryans moved into India and the contest for the possession of the land was merely a war of extermination, much the same as the invasion of the Saxons into Britain. The Saxons had nothing in common with the Britains and would neither amalgamate with them nor tolerate their existence. Or to take a more bloody example; in the conquest of Canaan by the Jews they defeated the King of Bashan and "smote him and his sons and all his people until there was none left him alive and they possessed his land." And when the Jews conquered the Midians they saved the women and children, but Moses was wrath with them and decreed "Now therefore kill every male among the little ones and kill every woman that hath known man by lying with him." Or take the command to the Jews, "Thou shalt smite them and utterly destroy them, thou shalt make no covenant with them nor show mercy unto them. Neither shall thou make marriages with them, thy daughters thou shalt not give unto his sons nor his daughter shall thou take unto thy son." Such was the character of ancient conquests and the Aryans in overcoming the aborigines simply exter-

NATIONAL ARCHIVES OF INDIA

minated them. The geographical position of India has protected it in great measure from invasion from without and the customs of the Hindus, not being subject to the discipline of comparison and conflict with others, did not develop with the same freedom as the Romans. It is thus that we find the customs and usages of the Hindus of the present day a tolerably faithful picture of the archaic customs of European nations.

TRIBES.

The patriarchal system implies the existence of the family and not one family alone but all the persons who were descended from the chief and who remained under him and were subject to his power. The natural restriction to the growth of the tribe was the want of water and pasture. Abraham and Lot parted from their kindred perhaps for the same reason as Lot afterwards left Abraham. "The land was not able to bear them that they might dwell together, for their substance was great so that they could not dwell together." Abraham was rich in cattle, in silver and in gold and Lot also had flocks and herds and tents, and when Abraham went to the rescue of Lot he armed his trained servants "born in his own house, three hundred and eighteen." This number of 318 fighting men together with the women and children and his riches in cattle made him a "mighty prince" in the land and as he was able to defeat the confederacy of four kings into whose hands Lot had fallen, it may be inferred that the four kings had about 100 men each. When Abraham went into Haran he had with him only his father, his wife, and his nephew Lot and when he left that place he took the substance he had gathered and the souls that he had gotten in Haran, and we find that these had increased to 318 men born in his own house. It would hardly be correct to infer that all these were his descendants but it is probable that as his wealth in cattle had increased he had been able to attach some men from poorer tribes to his own house. But be this as it may it is sufficiently clear that the patriarchal system had its origin in single families which expanded into many families who were connected by ties of blood relationship. This tie of kindred was the bond of union and ancient society consisted of a number of such tribes. As the tribe became too large and unmanageable it would break up into two or more as in Lot's case. Each tribe was complete in itself, the pressure of a common danger might make two or more tribes associate for the purpose of attack or defence, but the danger over the association

NATIONAL ARCHIVES OF INDIA

dissolved and separated into its several tribal units. In the North of India the archives show that the village communities were founded by an assembly of blood relations.

The tribe therefore had its origin in a single family, consisting of a man with his wife or wives, which under favorable circumstances would develop and would even gather to itself men not of the family whose exigencies obliged them to become the servants or slaves of a powerful tribe. The bond of union of the tribe, or at least of all those members of it who were on a footing of equality, was the blood relationship subsisting between them and a relic of this early idea that the only basis of agreement between persons of different tribes was that the two families should fuse into one by marriage, survives perhaps in the practice of alliances between Royal houses. Two great houses agree on a national policy and cement the agreement by a marriage and a royal marriage is invariably taken as an indication that there is a unity of interests and a common understanding between two nations.

BLOOD RELATIONSHIP.

Sir Henry Maine has put the family tie as the basis of union in the clearest light. "If a man was not of kin to another there was nothing between them. He was an enemy to be slain, or spoiled, or hated, as much as the wild beasts upon which the tribe made war, as belonging indeed to the craftiest and the cruelest order of wild animals. It would scarcely be too strong an assertion that the dogs which followed the camp had more in common with it than the tribesman of an alien and unrelated tribe."* The word which most commonly expressed this idea of relationship which knit the tribe together was *brother*. The term which expressed the closest relationship between the sons of one father was thus extended in signification to include all those who were of one tribe and lived under common subjection to one Patriarch who was supposed to represent the common ancestor of them all. An Englishman in India is often puzzled with the number of brothers the natives seem to have until he learns to distinguish between a brother of the same blood and a brother of the same caste.

VILLAGE RELATIONSHIP.

After the tribes have settled down into villages and the interests of the tribe are confined to the concerns of the village the idea of blood relationship gradually fades and the bond of union becomes the

* Early Hist. of Institutions, p. 65.

NATIONAL ARCHIVES OF INDIA

village bond. The village is at first the land occupied by a tribe but as strangers are allowed to settle in it who are not of the same family the strength of the idea of blood relationship fades and the common interest of the people being limited to the management of the concerns of the village it in itself becomes the bond of union. One belonging to the same village or town or to the same part of the country is looked upon with far more favor than a stranger. This feeling is admirably described in "Silas Marner." "No one knew where wandering men had their homes or their origin; and how was a man to be explained unless you at least knew somebody who knew his father and mother. To the peasants of old times the world outside their own direct experience was a region of vagueness and mystery; to their untravelled thought a state of wandering was a conception as dim as the winter life of the swallows that came back with the spring and even a settler if he came from distant parts hardly ever ceased to be viewed with a remnant of distrust."

IDEAL RELATIONSHIP.

In time religion and political opinions acquire an extraordinary influence; the fierceness of fanaticism and the zeal of political partisans have a power of fusing and melting into one mass the most extreme sections of the human race. To profess the same religion is to be a brother, to be of the same party is a tie stronger than blood. To be a Mohamedan, or Protestant, or Roman Catholic is to command the sympathies of Mohamedans, or Protestants, or Roman Catholics all the word over. Jesus, interrupted in one of his discourses to the people by a message from his mother, cries out "who is my mother; whosoever shall do the will of my father which is in heaven, the same is my brother and sister and mother." St. Paul declares there is neither Greek nor Jew, barbarian, Scythian, bondman or freeman but Christ is all and in all." In its purer form the influence of brotherhood takes the form of patriotism, the good of the country rises above all other considerations and the national flag becomes the symbol of the nation's unity and an object of veneration. We fight for England and an insult to the flag is an outrage to the nation. The highest form to which the idea has yet reached is that we are brothers by reason of our common humanity. We are brothers of the same human family and therefore bound to assist each other and to help forward the interests of the human race; all nations

NATIONAL ARCHIVES OF INDIA

and all peoples are of one brotherhood and all religions merge into the religion of humanity. We thus find the idea that assistance should be given to brothers of the same blood and that all others are enemies, successively enlarged so as to include brothers of the same ancestor—brothers by reason of living in the same village—brothers of the same political party—brothers of one country—brothers of the same religion—brothers of the human family—and it is this assumption of brotherhood or the equality of all, or the equal right of all to protection and assistance that forms the basis of all enlightened legislation.

VILLAGES.

Early society thus constituted by family groups living under the common authority of an elected chief and moving about in search of pasture and water would with the discovery and general introduction of the art of tillage settle down in certain lands where they would build and cultivate and pasture their cattle. But although they would cease to move about, there would not be any change in the government or custom of the tribe or their mode of thought. The village would be as complete and independant as the tribe was formerly. Its first care would be to secure itself from hostile aggression and we thus find that in ancient Germany "the mark has been formed by a primitive settlement of a family or kindred in one of the great plain forests of the ancient world; and it is accordingly like any other clearing surrounded by a thick border of wood or waste which supplies the place or increases the strength, of a more effective natural boundary. In the centre of the clearing the primitive village is placed: each of the markmen has there his homestead, his house, courtyard, and farm buildings."* The word "tun" or town was originally the name of the enclosure or hedge of the enclosed village and such also was the meaning of the word "heim" or "ham"—the Danish word was "by"—and hence we have the names of so many towns in England which end in "*by*," "*ham*" or "*tun*." The customs which were observed by the "*tun*" or "*by*" were the *bye-laws*.

GERMAN VILLAGES—CÆSAR.

Cæsar writing of the Germans remarks "that they do not devote themselves to husbandry but live chiefly on milk, cheese and flesh. No one has a fixed quantity of land or boundaries that may be called his own but the Magistrates and chiefs assign annually, and for a

* Stubbs' Constl. Hist., p. 49.

NATIONAL ARCHIVES OF INDIA

single year's occupancy to the several communities larger or smaller; whom the tie of common religious rites or consanguinity has brought together, a portion of land the extent and situation of which they fix according to circumstances. The next year they compel them to move elsewhere." Cæsar accounts for these practices by a fanciful supposition that the Germans wished to maintain a simplicity of life in order to be always prepared for war but it is far more probable that German society had at that time not quite thrown off its primitive nomadic practices. The people had acquired a rude husbandry but the change from a wandering to a stationary life would be effected gradually. At first they would cultivate for a season only and then go elsewhere until after the lapse of many generations they would settle down finally upon definite areas which they would fortify. (Such is the present practice of Indian forest tribes.) We find Cæsar observing that "they glory in the extent of unpeopled land which surrounds their territory and which they have devastated. They regard it as a peculiar mark of prowess that their old neighbours have fled from their settlements for fear of them and that no new comer has ventured to approach them. There is policy moreover in the plan; it is a guarantee of public security; sudden invasion is an impossibility."* The tie which united these early village communities was simply that of kindred and they had no general and political organisation. They were governed by chiefs who were chosen by the communities or inherited power from their fathers and who were independent one of another and they were united only by tribal names and were of equal rank in the tribal council. The chiefs administered a rude justice and the attitude of the village to other villages was determined by the blood relationship subsisting between them.

GERMAN VILLAGES—TACITUS.

One hundred and fifty years after Cæsar the Germans were observed by Tacitus. They were still a vast congeries of tribes speaking the same language, but having no collective organisation—"They were singularly free from the conmixture of blood with foreign races, their primitive traditions and mythology were altogether their own. They had, as in Cæsar's time, their own breeds of cattle and their only wealth was the possession of herds. Money and merchandise were of little account with them. They had no cities, nor even streets in their villages, their buildings were rudely put

* Stubbs' Constl. Hist., p. 30.

NATIONAL ARCHIVES OF INDIA

together from rough undressed materials. Their chastity and regard for marriage, the plainness and simplicity of their dress, their general temperance and sobriety are still strongly marked. The love of hunting has declined and the warriors spend the season of peace in lazy enjoyment; they have begun to use wine and that not in moderation and they have become inveterate and business like gamblers. Agriculture of a simple description and for the growth of wheat only would seem to have increased, and the freemen and slaves alike have settled homes. Local organization too is much more largely developed." *

INDIAN VILLAGES.

We can thus see clearly that the time between Cæsar and Tacitus was a time of transition. Society was slowly throwing off its nomadic habits and settling down into villages and agricultural life was gradually superseding the pastoral. Some memorial verses printed in a Madras Government Selection give a lively account of the manner in which the tribes followed their chiefs into the country about Arcot. "There the Vellalee conquered and extirpated, or enslaved, some more primitive population and took permanent possession of its territory. The poetess—for the lines are attributed to a woman—compares the invasion to the flowing of the juice of the sugarcane over a flat surface. The juice crystallises and the crystals are the various village communities. In the middle is one lump of peculiarly fine sugar, the place where is the temple of the god." † There must have been some principle at work which governed the distribution of the tribe into villages and that principle is most probably that of kinship. The invading tribe was probably not one vast tribe but a confederation of many small tribes loosely related, each under its separate chief and when the common purpose was effected the units confined themselves to distinct boundaries.

VILLAGE OFFICERS.

As vagrant habits died out and settled habits began to prevail, the fact that the members of the tribe and no others occupied a certain area of land would make kinship and occupation of the village synonimous ideas. "From the moment," says Sir Henry Maine, "when a tribal community settles down finally upon a definite space of land, the land begins to be the basis of society in place of the kinship. The change is extremely gradual and in some particulars it has not even now been fully accomplished but it has been going on through the

* Stubbs, p. 17. † Early Hist. of Institutions, p. 71.

NATIONAL ARCHIVES OF INDIA

whole course of history."* The idea of the chief of the tribe gradually changed into the chief of the village and the dominant chief of many tribes became king of the country. Of the English kings John was the first who called himself king of England. His predecessors commonly or always called themselves kings of the English. In France the king was king of the Franks and not king of France. Angle-land or England was the land occupied by the Angles, the tribes gave the name to the land but now the land gives the name to the inhabitants and Englishmen are the people of England as Americans are the people of America whatever their origin.

Mr. Freeman speaking of the village Mark in England in his Comparative Politics says, "This lowest political unit was at first here as elsewhere formed of men bound together by a tie of kindred in its first state natural, in a later stage either of kindred natural or artificial." But although there is no doubt that the earliest villages were the settlement of tribes, when society is more advanced villages spring up whenever the conditions or favorable for safety. "The unit of the constitutional machinery is the Township or Vicus. It may represent the original allotment of the smallest sub-division of the free community, or the settlement of the kindred colonising on their own account, or the estate of the great proprietor who has a tribe of dependants. Its headman is the Tun Gerefa, who in the dependant township is of course nominated by the Lord but in the independent ones may have been originally a chosen officer although when the central power has become stronger he may be, as in the Frank villa, the nominee of the king or his officers. The internal organisation in both cases seems to have been much the same for the dependent communities had probably in most instances been originally free and reduced to dependence by a powerful neighbour."† In the fifth century therefore the Saxon village in England was formed of persons who were bound together by the tie of kindred, who were independent of all others, and whose headman or chief was an elected officer.

SLAVERY.

It has been said before that with the exception of the head of the tribe all other members were on a footing of equality and in fact there could hardly have been differences of rank when all followed precisely the same occupation of herding cattle and a rude agriculture. The sanguinary and exterminating wars which the tribes waged would for a

* Early Hist. of Institutions, p. 72. † Stubbs' Const. Hist., p. 82.

NATIONAL ARCHIVES OF INDIA

long time prevent the existence of any member of an alien tribe but it may be that as intercourse and exchange between tribe and tribe was forced on by circumstances and the tribes subsequently quarrelled and fought, some favored members of the conquered tribe would be spared but not being of the same blood as the conqueror they could not participate in any of their privileges. If therefore their lives were spared their existence among the conquerors was merely permitted upon sufferance without having any recognised place amongst them and without any rights whatever. This position of an alien among a victorious tribe was in fact slavery and although the above description of its origin is fanciful and there may have been many other causes which produced this position, yet its effect was always that the slave had no recognised position and no rights. He was merely his master's animal to be killed whenever his master thought fit and this idea of the relation between masters and slaves existed until the efforts of the Christian church by extending the idea of brotherhood included the slaves within its protection and considered the Christian slave as the equal of the Christian master. It is needless to mention instances to shew that the life of the slave was at the disposal of his master and what a man had saved he could destroy, if he withheld his hand in the hour of battle and suffered the prisoners to live he could exercise the right to kill him at any other time. The very fact of suffering an alien enemy to live shews an advance in humanity and a few slaves in a tribe sharing in the same occupation as their masters or eating of the same food and with no other tribe to fly to, would in a short time indentify themselves with the tribe and would be an element of strength. But when the number of slaves increased as it did in the palmy days of Rome they became a source of danger and the plan of distinguishing the slaves by a particular dress was abandoned because it would reveal to them their strength. As many enemies as slaves became a proverb and an atrocious law intended to secure the safety of the citizens, provided that if a master were murdered all the slaves in his house should be put to death. In one case 400 slaves of a Roman citizen were executed because their master had been murdered in his house.

GERMAN SLAVES.

Stubbs gives the following description of slavery in Germany in the time of Tacitus. "The servus is personally free except in relation to his lord and his land neither of which he can forsake. His condition is not a hard one, he is very rarely beaten or forced to labor, but if

NATIONAL ARCHIVES OF INDIA

his Lord kill him, as sometimes may be done in a passion, it is done with impunity, no satisfaction can, it would seem, be recovered by his family. The origin of the servile class may be found in the subjugation by the tribe of the former occupiers of the land, a process which in the nomadic and warlike phase of public life that had now passed away must have been by no means uncommon, and which may have even created a subject population cultivating the land of the tribe in immediate dependence on the state or king. There is no reason to suppose that the depressed population were other than German in origin, although of course unconnected by any tribal tie with their masters."*

Again he writes of slaves in England. It cannot be denied that slavery in the strictest "sense was an early if not a primitive institution of the race. Tacitus knew that the slave had no remedy against the violence of his master; even his life could be taken with impunity. And in the earliest English laws such slaves are found; the theow or slave simple, whether wealh—that is of British extraction captured or purchased —or of the common German stock descended from the slaves of the first colonists; the esne or slave who works for hire; the white theow who is reduced to slavery because he cannot pay his debts; the man who has sold himself or his children to avoid starvation; the slave who works in his master's house and the slave who works on the farm; all are regarded as a part of the stock of their owner and are valued according to their importance to him; their offences against a third person he must answer for as for the mischief done by his cattle; they have no wergild, no credibility, no legal rights; wrongs done to them are regarded as done to their master. Their status descends to their children; all their posterity unless the chain is broken by emancipation are born slaves."†

STRANGERS.

The early tribes were thus divided into two classes, freemen and slaves, the former having equal rights and privileges and connected by actual kinship and the latter having no rights whatever. But after the tribes settled down into villages and an agricultural life superseded a pastoral life the equality subsisting between the freemen seems to have gradually changed into a division of ranks. The causes which chiefly appear to have developed this change are purity of descent from the original stock and wealth

* Const. Hist., p. 23. † Const. Hist., p. 78.

NATIONAL ARCHIVES OF INDIA

in cattle. In a tribal community held together solely by the bond of blood connection the position of a stranger, who was not a slave of the tribe, would not at first be tolerated but by the insensible action of intercourse with neighbouring tribes there would probably be developed a feeling of tolerance towards them and if a fugitive from one tribe appealed to the chief of another for permission to squat within the tribal limits the application would not ordinarily be refused but the new comer would not be allowed tribal privileges nor would he be allowed to live in the village or share in the common cultivation. The favor that was generally allowed to him was only to live and cultivate within that broad strip of border land which divided one village from another. Here he might cultivate with his own hand or with the help of cattle lent to him by the chief and it would be an easy step for the chief to require and to receive from the stranger a part of the produce and to appropriate it to himself. The greater power and greater share of produce thus accruing to the chief would have a tendency to prompt him to extend this source of strength and introduce more strangers, until the community would come to consist of the descendants of the original stock, the stranger settlers and the slaves, but as the two last classes would have no tribal privileges, the first class would be regarded as the privileged class and the idea of privilege would thus attach itself to the idea of birth or descent from the original settlers of the village.

FREEMEN AND GOOD BIRTH.

This will account for the importance and respect which attaches to "good birth" nearly all the world over to the present day. Special privileges gave an importance and a status to purity of descent from certain stock and the two facts were associated for so long that one seemed to be a natural consequence of the other. Special privileges presupposed the existence of good birth and good birth felt itself wronged if it did not receive special privileges. The levelling processes of democracy might in time affect this idea and good birth dissociated from special privileges may cease to be regarded as good in itself.

WEALTH GAVE RISE TO RANK.

The special privileges attached to a class caused that class to acquire a higher social status but among that class itself there must soon have arisen individuals who became conspicuous not merely from their personal qualities but from their wealth in cattle obtained perhaps as the share of spoil in a successful raid. Of course there must have been

NATIONAL ARCHIVES OF INDIA

a long interval of time before the community suffered the existence of private property in individuals but when the tribe became stationary there were many tendencies which would gradually induce the accumulation of private property in the hands of individuals. Money was unknown or little known but cattle were the index of wealth, the word capital is in fact derived from *caput* the number of head of cattle which a man possessed and chattles is a corruption of cattle. It was in fact the one form of wealth which was generally known to the old world. The Bo Aire in Ireland was a cow-nobleman and any person who had grown rich in cattle would become a Bo-Aire. The old nobility was not an exclusive class but was constantly recruited by persons who had acquired wealth. There was no impassable barrier between freemen and nobles, "the ceorl (churl) may become thegn worthy and the thegn earl worthy." Wealth was in fact nobility. The Irish chief or head of the tribe must be the most wealthy as laid down in their law tracts and personal wealth was the principal condition of the chief's maintaining his position and authority. A Saxon noble who had lost his land would be forced to become dependant upon another lord. In Greece pride of birth meant pride in seven wealthy ancestors in succession. Hereditary wealth would induce the idea of hereditary nobility until those who were born chiefs would think themselves of better stock than the man who had become a chief by his wealth and in the Irish tracts of the eleventh century we find that there were grades among chiefs. If a cow nobleman acquired double the wealth of a born noble he would become equal in rank to him and his descendants would be considered born nobles. Maine sums up his considerations on nobility with the remark that "the primary view of chieftainship is evidently that it springs from purity or dignity of blood but noble birth is regarded as naturally associated with wealth and he who becomes rich gradually climbs to a position indistinguishable from that which he would have occupied if he had been nobly born."*

In Saxon England we find that "the fully qualified freeman who has an estate of land may be of various degrees of wealth and dignity, from the ceorl with a single hide to the thegn with five hides—to the still more powerful man who had thriven to eorl right or who has his forty hides—the ealderman and the etheling * * The noble may be forced to have a Lord, the ceorl having land may dispense with

* Early Hist. of Institutions, p. 136.

NATIONAL ARCHIVES OF INDIA

one. There is no impassable barrier between the classes, the ceorl may become thegn worthy and the thegn eorl worthy,—and there are gradations in every class. The great distinction however is that of wealth and the landless ceorl is little better off than the slave."*

NOBILITY.

The extent of land which a man held determined his rank. A ceorl has one hide, a thane 5 hides, an eorl or earl 40 hides. The successful merchant may thrive to thegn right and the thegn might rise to the rank and status of an eorl. On the Saxon conquest the leaders of the tribes would be rewarded by larger grants of land than the general body and would be thus thegns and earls and the chief of the tribe generally became the hereditary king. In time the minor kings were swept away or fell under the rule of one or other of the kings of the heptarchy into which England became divided and the several kingdoms of the heptarchy ultimately fell under the dominion of the kings of Wessex. The power which attached to the idea of king was thus constantly on the increase and his dignity was more and more exalted. Side by side with his exaltation the influence and dignity of his personal dependants or gesiths would increase and the great officers of State would rank as high or higher than the nobles by birth or wealth. The ealderman or earl was the chief civil officer of the district or shire and the Duke was the chief military officer. The relative rank of persons in those times may be estimated by their wergild or the value which was placed upon their lives and which had to be paid by the man who slew any of them. This valuation also determined the importance to be attached to his oath. "The oath of the twelf hynd (twelve hides) man was worth six times that of the twy-hynd man and twice that of the six hynd man. The basis of the calculation was the wergild of 200 shillings which marked the ceorl twyhynd or simple freeman. The thegn was worth 1,200 shillings. The Briton or wealh was worth half as much as the Saxon or Angle: if he possessed twelve hides he was six hynd, if he possessed but one he was worth 100 shillings. The higher ranks, the kings, archbishops, bishop, ealderman and earl were estimated in multiples of the same sort—the king's high reeve was worth twice the thegn, the bishop and ealderman four times, the king and archbishop six times but the rules are neither general or constant."†

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* Stubbs' Const. Hist., p. 80. † Stubbs' Const. Hist., p. 161.

NATIONAL ARCHIVES OF INDIA

LAND CULTIVATED IN COMMON AND DISTRIBUTED ANNUALLY.

It cannot be too often repeated that the original settlers of a village were men connected by actual bonds of kinship who were on an absolute equality and that the existence of private and separate property in land was unknown. Cæsar speaking of the Germans says, "No one has a fixed quantity of land or boundaries that may be called his own but the Magistrates and chiefs assign annually and for a single years occupancy, to the several communities larger or smaller whom the tie of common religious rites or consanguinity has brought together, a portion of land the extent and situation of which they fix according to circumstances. The next year they compel them to move elsewhere." In Cæsar's time the Germans had not quite settled down into villages, they were still seminomadic and when they did finally settle down the mode of cultivation would be exactly the same; each man would have his allotted share to cultivate and to throw the produce into the common granary and at the next season the lands would be re-allotted. Writing of the Suevi who were engaged in constant war he says "after a year's service the warriors return home and till the land, their places are supplied by the husbandmen of the previous year; so agriculture and warlike discipline are perfectly maintained. But private and separate estates of land do not exist and the term of occupation is restricted to the year."*

BEGINNING OF PRIVATE PROPERTY IN LAND.

The remarks of Tacitus who observed the Germans 150 years afterwards are thus commented upon by Stubbs. "The wide forests and untilled plains are common property. But there is not yet apparently any separate ownership even of the cultivated land. True, we read no longer of the annual migrations of families or small communities from one portion of the territory of the tribe to another. The village settlements are permanent and the dwellings substantial and extensive: but the arable land is occupied by the community as a body, and allotments changed annually are assigned to the several freemen according to their estimation or social importance. The extent of waste land prevents any difficulty in the supply of the divisible area. The arable area is changed every year and there is abundance over." The division was still by lot but it seems a few favored individuals obtained more than the others. This may imply that each man now kept the produce of his own lot to himself and that there was no longer a com-

* Stubbs' Const. Hist., pp. 12-14.

NATIONAL ARCHIVES OF INDIA

mon granary or it may mean that the chief who got a large share of land was entitled to take from the granary a greater share in proportion to the larger area of his lot. There is no direct evidence of a common granary but the state was in the habit of rewarding its chief by grants of corn and cattle. This implies the existence of state property and Stubbs thinks that this was cultivated by the slaves. Judging from the custom of other tribes it may be thought that as there was no distinction of property the produce of each field was thrown into the common granary from which each received his share after deducting what was required for the purposes of the state, such as the supply of corn to the warriors in the field. The public grants would be made from the same stock and the division of the land into lots was apparently made to apportion a fair task to each member. In Servia, Croatia and the Austrian Sclavonia, the entire land is cultivated by the combined labor of all the villagers and the produce is annually distributed among the households, sometimes according to their supposed wants, sometimes according to rules which give to particular persons a fixed share of the usufruct. It is not unreasonable to suppose that the same practice was followed in Germany. A large grant was, it appears, made to wealthy persons, wealth consisting of cattle perhaps acquired by cattle lifting from other tribes by individual dexterity which would be kept as private property and private property in this form was permitted as well as in slaves and in the homestead, but the tribal lands were common property in which no individual had a private right. A warrior who had brought captives into slavery and had acquired cattle would get a larger allotment to cultivate than a warrior who had less slaves and cattle or none at all, and in proportion to the extent of the allotment would the allotee share in the common produce for the support of himself and his slaves.

PRIVATE LAND IN ENGLAND.

The Saxons having exterminated the natives and settled down into villages would naturally reproduce in England the customs of Germany and of these the method of common cultivation would be followed as the only one with which they were familiar. The fact of the migration from Germany would imply that the Saxons had felt the pressure of population upon the land and the surplus would thus be forced to migrate in search of new lands. But this very pressure must have been preceded by a long period of occupation of certain lands and in this state the annual redivision of fields

NATIONAL ARCHIVES OF INDIA

among the whole of the people would be growing more and more inconvenient and would be forcing upon them the necessity of redividing the land less frequently or of not venturing to disturb existing possession. There is no fixed date at which it can be said the practice had ceased but it declined imperceptibly. The right to redivide and the right of every freeman to possess a lot would never be disputed but to enforce the right would be a task beyond the power of the chief until by long disuse the right itself would cease to be acknowledged. It seems to be almost settled that at the time of the Saxon conquest private property became the rule in England and the Germanic Mark system as it is called was not enforced in the new settlement. The conquered land was apportioned among the tribes and at once became private property. Later researches would seem to shew that the mark was introduced by German colonists transplated from the Rhine by the Romans but however it was introduced it may be roughly said that private property dates from the Saxon conquest.

THE GERMAN MARK.

The German Mark is thus described. "Its essential character depends on the tenure and cultivation of the land by the members of the community in partnership. The general name of the mark is given to the territory which is held by the community, the absolute ownership of which resides in the community itself or in the tribe or nation of which the community forms a part. The mark has been formed by a primitive settlement of a family or kindred." Each markman has a right to the enjoyment of the woods, the pastures, the meadow and the arable land of the mark but the right is of the nature of usufruct or possession only. The right of each is one of absolute equality and when that has ceased to be the rule it is regulated by strict proportion. The arable area is divided into as many equal shares as there are mark families in the village and is subject to the alternation of crops. In the infancy of agriculture the rotation would be simply that of corn and fallow and for these two divisions a common field would suffice. But as tillage developed the community would have three or more divisions on which the proper rotation of crops and fallow might be observed. In each division the markman had his share. The choice of the meadow, the rotation of crops and allotment of shares were determined by the village assembly in which every markman may sit and without its consent no stranger could settle in the territory or purchase the share of another.

NATIONAL ARCHIVES OF INDIA

If a markman built his hut apart from the village street and made a clearing for himself in the forest which surrounded the village lands this would be his separate field and would not be liable to be reallotted. It is not probable that this would often occur but the practice of settling broken men upon the border lands and of admitting strangers to settle there was a recognised practice and the head of the village no doubt received something in the shape of tribute or rent from these men for the indulgence given to them. The increase of these rude holdings would familiarise the primitive settler to the idea of separate property in land and when the annual redivision grew to be inconvenient the nature of the holdings of the original settlers would assimilate to the practice of the border holdings. It is not only the growth of population that would induce a change in the practice of annual redivision, the knowledge of farming would tend to make the greatest difference observable in the produce of a field when managed by a skilful farmer or by an ignorant one and the mark system was therefore only possible so long as the village community was not large and there was an equality of farming skill. But while separate property in fields would thus grow up the right of grazing in the forest and of collecting forest produce would continue the same, the common right of every freeman in the village.

INDIAN VILLAGE COMMUNITIES.

The mark system was not confined to the Germans, it was equally the custom of the Salian Franks and the manner of administering the affairs of the village was just the same nor could a stranger settle in the village lands without permission of the freeman. "The village community of India," writes Sir Henry Maine, "exhibits resemblances to the Teutonic township which are much too strong and numerous to be accidental, when it differs from the township the difference may be at least plausibly explained. It has the same double aspect of a group of families united by the assumption of common kinship and of a company of persons exercising joint ownership over land. The domain which it occupies is distributed, if not in the same manner, upon the same principles and the ideas which prevail within the group of the relations and duties of its members to one another appear to be substantially the same."* And again "the description of the Teutonic or Scandinavian village communities might actually serve as a description of the same institution in India.

* Village Communities, p. 12.

NATIONAL ARCHIVES OF INDIA

There is the arable mark, divided into separate lots but cultivated according to ancient customary rules binding on all. Whenever the climate admits of the fine grass crops, there are the reserved meadows lying generally on the verge of the arable mark. There is the waste or common land, out of which the arable mark has been cut, enjoyed as pasture by all the community pro-indiviso. There is the village consisting of habitations each ruled by a despotic pater familias and there is constantly a Council of Government to determine disputes as to custom." And to complete the similarity between German villages and Indian we may refer to Elphinstone's account of an Indian village. "The popular notion is that the village landholders are all descended from one or more individuals who settled the village, and that the only exceptions are formed by persons who have derived their right by purchase or otherwise from members of the original stock. A landholder may sell or mortgage his rights but he must first have the consent of the village and the purchaser steps exactly into his place and takes up all his obligations. If a family becomes extinct its share returns to the common stock."*

RUSSIAN VILLAGES.

The Russian villages according to modern researches are organised communities on the same model as the Indian villages but they still appear to retain the practice of redividing the land periodically. "After the expiration of a given but not in all cases of the same period separate ownerships are extinguished, the land of the village is thrown into a mass and then it is redistributed among the families composing the community according to their number. This repartition having been effected the rights of families and of individuals are again allowed to branch out into various lines which they continue to follow till another period of division comes round."† In the South Danubian Provinces, such as Sclavonia and Servia, the villagers are still believed to be a group of kinsmen the land is cultivated by the labor of all and the produce is divided once a year and distributed according to certain fixed rules. The chiefs of the ruder high land clans used to dole out food daily to the families under their dominion.

Mr. Wallace who is the best and one of the most recent travellers who have written on Russia, gives a clear and graphic account of the village system of that country and from his book large and interesting extracts might be made to show that the system is identical with the

* Hist. of India, p. 126. † Ancient Law, p. 266.

NATIONAL ARCHIVES OF INDIA

ancient German mark and that there is essentially no difference between Russian and Indian villages, which are living survivals of an order of things which has long passed away in England and Germany. The peasant family of the old type, he writes, is a kind of primitive association in which the members have nearly all things in common. The village may be roughly described as a primitive association on a larger scale. The family property is held in common and the family is jointly responsible for its debts ; in like manner the arable land and pasture are held in common by the village community who are jointly responsible for taxes and common obligations. If a peasant becomes a drunkard, or takes some equally efficient means to become insolvent, every family in the village has a right to complain, not merely in the interests of public morality but from selfish motives, because all the families are collectively responsible for his taxes nor can a peasant leave the village without giving security for his liabilities. The arable land and the pasturage belong not to individual houses but to the commune and all the households are collectively and individually responsible for the Government taxes. About once in every fifteen years a census is taken of the village families and the land is redivided among them, generally by casting lots when there is much demand for land, but where the land is abundant and poor and the taxes heavy the families strive to accept as little as possible as their share. The division is made by the Village Council where everybody is present and Wallace's humerous description might be read with interest.

"Ivan is being asked how many shares of the communal land he will take and replies in a slow contemplative way, "I have two sons and there is myself and so I'll take three shares or somewhat less if it is your pleasure."

"Leu," exclaims a middle aged peasant who is an influential member, "You talk nonsense. Your two sons are already old enough to help you and soon they may get married and so bring you two new female laborers."

"My eldest son," explains Ivan, "always works in Moscow and the other often leaves me in summer."

"But they both send or bring home money and when they get married the wives will remain with you."

"God knows what will be," replies Ivan, "Who knows if they will marry ?"

"You can easily arrange that."

NATIONAL ARCHIVES OF INDIA

"That I cannot do. The times are changed now. The young people do as they wish and when they do get married they all wish to have houses of their own. Three shares will be heavy enough for me!"

"No, no. If they wish to separate from you they will take some land from you. You must take at least four. The old wives, those who have little children, cannot take shares according to the number of souls."

"He is a rich peasant," says a voice in the crowd, "lay on him five souls" (shares).

"Five souls I cannot! By God I cannot!"

"Very well, you shall have four;" says the leading spirit to Ivan, and then turning to the crowd inquires, "Shall it be so?"

"Four! four!" murmurs the crowd and the question is settled.

Next comes one of the old wives just referred to. Her husband is an invalid and she has three little boys, only one of whom is old enough for field labour. If the revision list were taken strictly as the basis of distribution, she would receive four shares of the communal burdens. She must therefore receive less than that amount. When asked how many she will take she replies with downcast eyes, "As the Mir decides, so be it!"

"Then you must take three."

"What do you say," cries the woman, throwing off suddenly her air of obedience, "Do you hear that ye orthodox? they want to lay upon me three souls! Was such a thing ever heard of? Since St. Peter's day my husband has been bedridden—bewitched it seems, for nothing does him good. He cannot put a foot to the ground, all the same as if he were dead; only he eats bread!"

"You talk nonsense," says a neighbour, "he was in the gin shop last week."

"And you," retorts the woman, "what did you do last parish fête? Was it not you who got drunk and beat your wife till she roused the whole village with her shrieking? And no further gone than last Sunday."

"Listen," says the old man sternly, cutting short the torrent of invective, "You must take at least two shares and a half. If you cannot manage it yourself you can get some one to help you."

"How can that be? Where am I to get the money to pay a labourer?" asks the woman with much wailing and a flood of tears. "Have pity ye orthodox on the poor orphans, God will reward you," and so on and so on.

NATIONAL ARCHIVES OF INDIA

SIMILARITY OF VILLAGE CUSTOMS.

It would seem therefore that German, Frank, Saxon, Russian, Sclavonian and Indian villages have all been formed upon the same idea of kinship and it may be presumed from what we know of the Germans that the preceding stage of all was the tribal or patriarchal following a pastoral life and having property in common with equal rights and with equal duties. It is possible and even probable that separate property in cattle may have grown up in the pastoral state and a man rich in cattle would attach to himself a number of the tribe more or less dependent upon his bounty and that the fact of difference in wealth may have induced difference in rank, so that even in the pastoral state there may have been distinctions of wealth and of rank which was a consequence of wealth. Tacitus has remarked that there were distinctions of rank among the Germans but his observations were made when the tribes had more or less settled into villages. There were nobles and freemen, the former claiming descent from the gods but having no greater political rights than the freemen, descent from the gods merely giving social distinction and perhaps meaning no more than descent from some hero of the tribe. In an old English chronicle in which the Saxons of the early Frank empire are described there is a passage that "it is by law established that no order shall in contracting marriage remove the land marks of its own lot, noble must marry noble, freeman freewoman, freed man freed woman, serf handmaid. If any take a wife of different or higher rank than his own he has to expiate the act with his life."* This evidence is not conclusive but it shows that there were early distinctions of rank and that the later traditional feeling was a perpetuation of these distinctions hardening them into castes. That it never was a law is shewn by the fact that there was no impassable barrier between the different classes and that the freemen might thrive to thegn right and the thegn to eorl right.

CASTES IN INDIAN VILLAGES.

If then the tribes recognised private property in cattle and slaves and the possession of wealth had reflected rank upon the owner the passage from common property in the tribal lands to separate property would not be difficult as soon as the primitive society had outgrown those early conditions in which it was alone possible to maintain a community of goods and enforce a community of labor. That there should

* Stubbs' Const. Hist., p. 43.

NATIONAL ARCHIVES OF INDIA

be so many existing types in different countries of these early forms of property is extraordinary and shows the wonderful vitality of customs. The village community being related by blood it is not at first easy to understand why in an Indian village there should be distinct castes and different religions, but with the exception of the Mahars and Bheels and Kolis, who appear to be aborigines and are perhaps the remnants of the original owners of the soil who were not exterminated but reduced to the position of slaves and allowed to settle on the borders of the village, the other inhabitants are generally of one race. Distinctions of caste are not distinctions of race but represent for the most part differences of professions which have formed into guilds and hardened into castes with exclusive rules borrowed from the Brahmans. Wherever there are men of a distinct race from the general inhabitants they have obtained their footing by purchasing the rights of an original holder. The Mussalman conquests introduced men of the Tartar race into a great number of villages and their descendants still exist though they are chiefly to be found in the large towns and the old countries of Mohamedan rule. The shocks to which most villages have been subjected during the long anarchy of Hindu and Mohamedan dominion have destroyed in great measure the rule that no stranger should be permitted to settle in the village without the consent of the community but the ancient type of the village community still exists in many parts and the land holders are known by the significant name of Bhagdars or co-sharers of the village.

VILLAGES HELD IN COMMON IN OUDH.

In the Oudh Land Revenue Act there are clear evidences of the common ownership to which legal recognition has been given. The grants of villages or districts made by Mahomedan Rulers have in many parts superimposed a Talukdar who holds his villages on much the same tenure as the Norman nobles held their English estates after the conquest and although centuries have passed since these grants were made the villages submit grudgingly to the recognition of the Talukdar's over-lordship. The Act however recognises the title of the Talukdar when it is distinct but declares that when several persons are in possession of a village there should be a joint settlement of the revenue with all such persons who should be jointly responsible. The ancient Germanic custom of annual redivision still appears to survive for in Section 31 it is provided, "In any Mahal where by the established custom the land or the amount of revenue payable by such co-sharer

NATIONAL ARCHIVES OF INDIA

is subject to periodical redistribution or readjustment" the practice may be enforced on the application of the co-sharer. A further stage of development is also recognised for it appears to be in practice not infrequent for the co-sharers to agree to a division of the lands once for all which are then held separately as private property but the revenue assessed upon the village is still borne as a general charge upon the villagers. This is apparently a survival of the idea that the original form of taxation was not a tax upon land but that each tribal community settled in a village was required to bring so much corn and cattle for the public requirements or commute the assessment into so many pieces of silver. The villagers cultivated lands and it was a share of the produce of these lands that they were called upon to contribute, but it was not because the villagers were cultivators that they were assessed but because they were freemen of the tribe and were therefore liable to contribute to the tribal burdens. As a freeman each was entitled to a plot of land in the village but whether he cultivated or not he was equally liable for his quota. The idea has apparently dimly survived in Oudh that the Government taxation is a personal burden upon each freeman of the village and not upon the land and therefore while a growing inconvenience might induce them to forego annual distribution for permanent lots the idea of a personal burden would not be disturbed and they would divide among themselves the tax which the Government might fix on the land in the way most suitable to their primitive ideas.

LAND TAX A TRIBUTE PER VILLAGE.

Almost all over India the settlement of the Government tax was made in a lump with the headmen of the village and was rather a tribute than a land tax and the task of subdividing this sum and apportioning the payment upon each individual villager was left to the villagers themselves. Native Governments never interfered with the customs of villages, each village was assessed at a certain sum which was sometimes fixed in perpetuity, or more often was settled annually between the Government Officers and the head men of the village, and the terms were put into the form of a written agreement and signed by the headmen. This practice has in Guzerat given rise to the term Matadars or signatories of the contract which is now looked upon as a term of honor although the practice of signing the contract has long been discontinued.

NATIONAL ARCHIVES OF INDIA

STRANGERS WERE RACKRENTED.

If we knew enough of the interior economy of an Indian village it would be interesting to trace and observe how the tribute was apportioned among the villagers. Whether it was confined to the land owners only, or extended to all residents of the village, we can only affirm that the incidence was extremely unequal and depended almost solely upon custom. Some were obliged to pay more than others apparently only because their fathers used to pay a larger share and these are usually the poorest of the community. But we now may advance the theory that the unequal shares were originally regulated upon a principle, the broad principle that each freeman or descendant of the original tribe was entitled to a free lot subject only to such contributions as he was obliged to make for the tribal wants, and these contributions would be very equally distributed. But while every freeman was only obliged to contribute equally with other freemen the same principle would not be applied to the strangers and freed slaves who might have been allowed to settle upon the village border; these settlers were there upon sufferance and had to submit to such terms as the freemen imposed. It would not be the policy of the village to allow the settlers to grow wealthy or to be exempt from burdens which were imposed upon freemen and the natural practice would be to exact as much as possible from these strangers and freed slaves and then apportion the balance of the contribution among the freemen. In Ireland the position of these stranger settlers is thus described, "Moreover the land which they cultivated in their place of refuge was not theirs but the Chief's. They were the first tenants at will known to Ireland and there is no doubt that they were always theoretically rackrentable. The three rents are the rackrents from a person of a strange tribe, a fair rent from one of the tribe, and the stipulated rent which is paid equally by the tribe and the strange tribe. The person from a strange tribe is undoubtedly the Fuidhir and though the Irish expression translated rackrent cannot of course in the ancient state of relation between population and land denote an extreme competition rent, it certainly indicates an extreme rent, since in one of the glosses it is graphically compared to the milk of a cow which is compelled to give milk every month to the end of the year."*

* Early Hist. of Institutions, p. 175.

NATIONAL ARCHIVES OF INDIA

NARWADARI TENURES.

Besides the system of common cultivation and joint responsibility which exists in Oudh the traces of an almost identical system may be found in the Narwadari tenures in Gujarat. Mr. Pedder thus describes them, "Each village was originally founded by a family, or association of families, of the cultivating castes; Rajputs and Kunbis, Boras or Bhatelas all apparently belonging to kindred tribes. These people with their servants and halis (slaves) fixed the village site, dug the well and tank, planted the groves, built the village temple and then exercised rights of possession. They then induced artizans to settle in their village who were the servants of the community and to whom they gave houses, bits of land rent free, grain cesses, &c. Other cultivators mostly of inferior castes were in process of time attracted to the village and the proprietary body permitted them to cultivate such land as they did not want themselves but gave them no proprietary rights."* This of course is a fancy sketch but it represents the legendary idea of the foundation of the village by families who were kindred to one another and that strangers were subsequently allowed to settle in the village lands on sufferance. Mr. Pedder proceeds:—"At first the proprietary body probably held the land absolutely in common agreeing at the beginning of each season what lands each member should cultivate, the remainder being left for the non-proprietors to choose from." There is no evidence of this, but Mr. Pedder who was acquainted with the Oudh system explains the origin of the Narwa tenure by the light thrown upon it by the commune system of Oudh. He does however give an illustration of the practice in some of the Koli villages of Parantej. "Every third year the villagers agree in what locality they will cultivate. By having their crops all in one part of the village lands they can assist each other in guarding them. When they have settled this they divide themselves into small farms of 2 to 5 or 6 cultivators. The Patel distributes the land among these farms, the members of which cultivate in common and after paying the Begoti divide the grain among themselves generally in proportion to the number of bullocks each man has put into the common stock."

This is certainly a survival of a very primitive custom. There is still the periodical division of lands among the community and a fair apportionment of labour to each, the produce is thrown into a common stock from which common charges are defrayed and the balance divided

* Khaira Settlement Report, p. 4.

NATIONAL ARCHIVES OF INDIA

on a regular principle. The practice of cultivating a different part of the village lands in different years is required to let the land lie fallow. Under the mark system the land was generally divided into three parts and each part was cultivated in turn and Sir Henry Maine in his Village communities has pointed out a number of instances in England in which the baulks or strips of uncultivated land which divided these parts still exist.

BEGINNING OF PRIVATE PROPERTY IN NARWA VILLAGES.

The next stage of the beginning of private property is thus described, "But when the proprietors became numerous enough to occupy most of the more valuable land, an actual division naturally ensued. The principle upon which this division was made was the following. A certain portion of the land, usually the least valuable, was generally set aside to be still held in common, as common pasturage, watan of village servants, and to be let to non-proprietary cultivators on behalf of the community. This was called Gaumbhag or Majmun. The remainder of the lands was primarily divided into estates (called mota bhags, paties, pans, &c.) according to the original families who founded the village or their main branches. Each of these estates was then subdivided among the members of each family strictly in accordance with the rule of inheritance, allowance being made sometimes in quantity for the inferior fertility of some shares."

This is certainly a very confident description of the origin of private property and it may safely be said that the original proprietors never made a division such as Mr. Pedder has described. The conception that a man could hold a certain piece of land as a right against the rest of the tribe was of slow and difficult growth and has not yet become universal. But as far as we can read the history of the past by the scattered glimpses which we possess, we may affirm that the right of private property in land grew up insensibly and under great social pressure, the right of the community existing in theory the practice growing wider and wider from the theory. It is probable that the mota bhags do represent the lands occupied by some remote ancestor and his descendants when the annual redivisions ceased. But it is hardly probable that the community would have reserved land for strangers considering the aversion with which they were regarded. All outside the cultivated land would be either forest or meadow and strangers might be allowed to settle there, and there the community would graze their cattle. No individual would even aspire to separate rights in those

NATIONAL ARCHIVES OF INDIA

lands and they have continued to be common lands or folk land in England, Germany and India. The freemen of the village may be scattered but there are even now many curious instances where individuals have grazing rights in the common of some distant village which is the only light to show that they originally were freemen of that village.

All the sub-sharers in Narwa villages had equal rights and each group elected its chief thus reproducing in the sub-sections the organisation of the tribe. The several chiefs jointly acted as representatives of the village in dealings with Government and strangers ; and this is in fact the village council for village affairs although one, no doubt, would be the leader of the council. No number is assigned but it is probable the council consisted of five men or the Panch, just as in England the villages had a Reeve and four men, the Reeve corresponding to the Patel.

STRANGERS IN NARWA VILLAGES.

Of non-proprietary cultivators Mr. Pedder says they were of two kinds " mere tenants at will and those who had acquired some sort of right to their lands. The latter class were mostly those who cultivated the common lands. As the proprietors did not want these lands themselves and as it was an object to them to get them cultivated, the tenants were naturally undisturbed in their possession; and since custom, in India especially, is always tending to become right they gradually acquired a customary title to the possession of their holdings, greatly strengthened when they had permanently improved them. Those persons who cultivated the lands of particular proprietors were mostly mere tenants at will. If a proprietor could not cultivate himself all his lands he usually tried to get some stranger to settle in the village and rent it from him. To this person he gave a site for a house in his share of the village site and was considered to have a right to the tenant's services. If the latter rented other lands, he paid a cess to the original land lord in acknowledgment of this right which is still known in Khaira under the name of 'betali vero.' "

Mr. Pedder's opinion that non-proprietary cultivators were sought for by the village community and induced to settle in the village is if not purely fanciful at least so far posterior to the development of private property as not to affect the question as to the origin of this non-proprietary body. It seems to be clear however from the evidence that has been gathered as to the composition of early Germanic villages that

NATIONAL ARCHIVES OF INDIA

the non-proprietary body were the slaves of the community and the fugitives who were permitted to settle on the waste. Every freeman in those early days belonged to a tribe and had his lot in the tribal village. If he fell under the displeasure of his brethren and was expelled from the tribe, or if he became a fugitive, he would seek refuge in some other tribe. Among them he might be allowed to settle but as he was not of their kin his lot would be in the waste or the common land and not in the cultivated land. We have positive proof of the existence of these settlements of strangers and freed slaves in Germany and England, and in Ireland we have read how they were rackrented. This exaction of rent from them would in time become a source of profit to the community and it may be that then it would be thought politic to induce strangers to come, but the introduction of strangers was always, and is to this day, regarded with jealousy. No stranger was allowed to settle in the village mark without the consent of the tribe. No stranger is now allowed to become a proprietor in a Narwa village or Russian village without the consent of the village community. If a proprietor in Oudh wishes to sell his share he must offer it first to his near kinsmen, then to the more remote, then to the village community and if all these decline to purchase he may sell it to an outsider. In the Bombay Narwadari Act the alienation of only recognised shares is permitted and no right of preemption is given to the other Narwadars but there is no doubt that alienation to a stranger was not known to the early custom and our legislative permission to sell to a stranger is an innovation. The native point of view is that the village lands are tribal lands which may be allowed to descend to and be subdivided among individuals of the tribe according to customary rules of inheritance, but failing heirs the land relapses into the folk land of the village to which the community have equal rights. Sales and gifts among themselves are permissable but to admit a stranger to be a proprietor is to destroy the tribal unity. The English view assumes that the tribal unity no longer exists and that individual rights should not be controlled by village rights, which have lost all meaning now that tribes are defunct. The Narwadari Act in prohibiting the sale of unrecognised bhags does not maintain any essential feature of the tenure, for the unrecognised bhag is merely the undefined share of a Narwadar in the joint family property and this indefinite share can no more be sold than the indefinite share of a member of any joint Hindu family. The Act therefore is of no use except as affirming that a recognised bhag can be sold

NATIONAL ARCHIVES OF INDIA

even to a stranger. What does keep up the tenure is the survey practice of assessing the village lands both cultivated and waste and then demanding the lump sum from the Bhagdars, who are thus treated as the owners of the whole village and Government have reserved no rights over the waste land. In England the folk land passed gradually from the control of the village to the control of the King. It was by grants of folk land that services to the tribe were rewarded and as the head of the tribe expended into the King of the State he still exercised this practice with the assent of his witan or council until the idea that the folk land belonged to the King superseded the idea that it belonged to the village.

OPPRESSIVE TAXES ON VILLAGES.

The system of payment of the Government revenue by a definite share of the gross produce of each village was in full force at the time of Akbar and his revenue reform consisted in demanding a money payment in place of payment in kind. His survey was made with a view to fix the value which each village should pay but he made no change in the management of the village ; the community continued to manage its own affairs and the payment was no doubt made by dividing the amount among the shares according to the customary division. But when the Marathas overran the country and farmed out the revenue to speculators whose only object was to make money in as short a time as possible, the demands upon the villages increased so rapidly and enormously and the communities were harassed so continuously by extraordinary exactions that many villages were deserted and never re-occupied by their original owners and in many others the farmers altogether usurped the rights of the original proprietors.

" But in many villages especially in Broach and Khaira, the proprietary body succeeded in retaining the management of their villages, and in order to meet the new demands, founded neither on a definite share of the produce, nor on a fixed assessment of the land, but only regarded by the ability of the ryots to pay, they invented the Narwa or Bhagdari system which was simply this ; the joint responsibility for the payment of the Government demands was divided in the same manner as the lands of the community had originally been, and each proprietor was held answerable for a share of the revenue proportionate to his share of the proprietary right, the members of each family holding a separate estate being in the first instance responsible

NATIONAL ARCHIVES OF INDIA

for each other and finally the whole coparcenary being jointly answerable for the entire amount being paid."*

NARWADARI TENURE NOT INVENTED BUT SURVIVED.

But what evidence is there for assuming that this system was introduced during the period of Maratha oppression. Of a period so recent there should be abundance of evidence in support of this view but Mr. Pedder advances no evidence whatever. Nor is there any necessity for assuming that any violent change occurred in the constitution of the village and it would be very remarkable if this change followed exactly the same model in every village. The truth would appear to be that the Narwa village constitution is the ancient constitution and it survived in those villages where the feeling of family connection among the sharers had the strongest vitality; brother stood by brother and the families held together. Where the family ties were loosened and the kinship of the village had become a watery theory, each man under the pressure of exaction endeavoured to make the best terms for himself with the Revenue farmer who could then oust insolvents or reduce them to the position of tenants at will and acquire a dominant power over whole tracts of country.

THE ENGLISH BREAK UP NARWA TENURES IN IGNORANCE.

But the disruption of the ancient constitution of villages did not cease with the fall of the Marathas. Under English administration their constitution was broken up from mere ignorance. "Within a few years of the beginning of our rule most villages were made Khalsa *i.e.* taken under the direct control of Government. The management of the common land was taken out of the hands of the Matadars and the occupants of these were considered tenants of Government and not of the Matadars. A lump assessment was fixed upon the Narwa or Bhagdari lands and the joint responsibility of the coparcenary kept up. But the jamabandi was not collected in a lump through the Matadars but by the Talati for each share individually; the Talati calculating the amount of his khata by a phalni on his share according to the lump assessment fixed by the Collector."

We can now see how unfair this practice was. The sharers were at once deprived of the common lands of their villages and they had no power to object to the cultivation of these lands by strangers, yet if the strangers failed to pay, the whole body was responsible for the deficit and the strangers were in like manner responsible for the debts of their neighbours.

* Pedder's Report, p. 9.

NATIONAL ARCHIVES OF INDIA

GRADUAL PASSAGE FROM COMMONALTY TO PRIVATE PROPERTY IN INDIA.

This short review of the tenures in common of Oudh and Guzerat discloses that in India there still exists in active operation the primitive village community at different stages of its development. The earliest stage we can recognise is the instance given of the village where a periodical redivision is made of the lands and a certain lot is given to each cultivator who can hardly be said to have any individuality, his work is allotted to him, the produce of his labor goes to the tribe and he is maintained by the tribe. The next stage is the zemindari tenure of Oudh where the original families and strangers are found in the same village and where there is a distinction between tribal lands and lands appropriated to the families. The strangers and even some of the proprietary body cultivate in the common and the rents they pay are first deducted from the Government revenue demand and the balance divided among the families. The shares of the families are as yet hardly defined and the amount that each member of the proprietary body should pay is determined by customary rules. The next stage brings us to the imperfect patidari tenure in which the lands belonging to the families are defined, the income derived from the common lands is first brought to account and the balance of the Government demand paid by each sharer in proportion to the land he holds and the whole of the sharers are responsible for the default of one. The fourth stage is where the common lands have also been divided among the sharers so that each sharer or a joint family has its distinct lot of cultivated land with a distinct share in the waste. The primary division into mota bhags or large shares still exists as a basis of calculation for if the individual sharer fails to pay his quota, the sharers in the mota bhag are responsible, and if the mota bhag fails then the other mota bhags must pay. This last stage it must be evident is just hovering on the brink of private property and the only bond that keeps the tenure alive is the idea of joint responsibility, but if Government should choose to declare that in such villages they waive their right to enforce the joint responsibility the tenure must crumble away and all that it would be necessary to provide for would be to enact that on failure of heirs the share should lapse to Government and not fall back into the mota bhag the members of which are theoretically the gentiles of the deceased.

ENGLISH COPYHOLD CUSTOMS A SURVIVAL OF COMMONALTY.

In England notwithstanding the progress made in the establishment of private property certain ancient customs still exist to attest

NATIONAL ARCHIVES OF INDIA

a condition of things when property had hardly emerged from joint communal ownership. "Common lands of manors and townships still exist at the present day and within a century common cultivation also existed in many parts of England. It is to this system that the origin of some part of the machinery of local courts of the manor and township which still exist may be traced. The right of the markmen to determine whether a new settler should be admitted to the township exists in the form of admitting a tenant at the Court baron and customary court of every manor. The right of the markmen to determine the by-laws, the local arrangement for the common husbandry, or the fencing of the hay fields, or the proportion of cattle to be turned into the common pasture, exists still in the Manorial courts and in the meetings of the townships. The very customs of relief and surrender which are often regarded as distinctly feudal are remnants of the polity of the time when every transfer of property required the witness of the community to whose membership the new tenant was thereby admitted."*

IRISH LAND BECOMING PRIVATE.

The Irish Law Tracts furnish evidence to prove the gradual change from common tribal property to separate property. Sir Henry Maine treats of the subject in his usual clear way. "Whence does co-tenancy arise? The answer given is, 'From several heirs and from their increasing on the land.' The tract then goes on to explain that the land is in the first year to be tilled by the kinsmen just as each pleases; that in the second year they are to exchange lots; that in the third year the boundaries are to be fixed; and that the whole process of severance is to be consummated in the tenth year. I trust it is not a presumptuous conjecture that the order of change here indicated is more trustworthy than the time fixed for each of its stages. The period of ten years for the entire transition from collective to separate property seems to me greatly too short and hard to reconcile with other Irish evidence; and I suggest that the Brehon lawyer attached to the institution of separate property, like the rest of his class, is depicting rather an ideal than an actual set of arrangements. The process, however, which is here described, if it be spread over a much longer space of time is really in harmony with all our knowledge of the rise and progress of cultivating communities. First a joint family, composed of several heirs increasing on the land, is found to have made a

* Stubbs' Const. Hist., p. 34.

NATIONAL ARCHIVES OF INDIA

settlement. In the earliest stage the various households reclaim the land without set rule, next comes the system of exchanging lots. Finally, the portions of land are enjoyed in severalty."

"The Liber Hymnorum attributed to the eleventh century contains the following statement. Numerous were the human beings in Ireland at that time (*i. e.* the time of the sons of Aid Slave A. D. 658-694) and such was their number that they used not to get but thrice nine ridges for each man in Ireland, to wit nine of bog, and nine of smooth (arable) and nine of wood. Another Irish manuscript believed to date from the twelfth century the 'Lebor na Huidre' says that there was not ditch nor fence nor stone wall round land till came the period of the sons of Aid Slave but only smooth fields. Because of the abundance of the households in their period, therefore it is that they introduced boundaries in Ireland. These curious statements can, of course, only be regarded as authority for the existence, at the time when they were penned, of a belief that a change from a system of collective to a system of restricted enjoyment had occurred at some period or other in Ireland and of a tradition respecting the date of the change. But it is instructive to find both of them attributing it to the growth of population and an especial interest attaches to the account given in the 'Liber Hymnorum' of the newer distribution of land which was thought to have taken the place of something older. The periodical allotment to each household of a definite portion of bog land, wood land and arable land, wears a strong resemblance to the apportionment of pasture and wood and arable land which still goes on in our day under the communal Rules of the Swiss Allmenden and which is an undoubted legacy from the ancient constitution of certain Swiss Cantons as teutonic Hundreds."*

INDIAN MIRASI TENURE.

Most of the land in the Deccan at the date of the introduction of British Rule was held on Mirasi tenure and it would be interesting to trace whether this tenure which was so much respected and esteemed even by the most unscrupulous of the native kings is not in fact a development of the tribal system of holding land. In the appendix to Elphinstone's Report on the countries conquered from the Peshwa there are several Reports of the inquiries made by British Officers regarding this tenure. The prevalent idea was that all the land was originally Miras land and that it had gradually fallen into the hands of Govern-

* Early Hist. of Institutions, p. 112.

NATIONAL ARCHIVES OF INDIA

ment "by the failure of heirs of the Mirasdars or other accidental circumstances such as quarrels amongst brothers or relations about the division of their lands, which they often desired to give up altogether rather than resign to each other any part of what they held to be their rights, or perhaps the poverty of the Mirasdars and declining state of the country may have induced many to give up their lands." Whole villages were at that time still held under Miras tenure and when parts of the land were held by Upris, which literally means a stranger, the fields were still entered in the records in the names of the original Miras proprietors.

OWNER PAID FIXED LAND TAX.

The tenure was briefly that the owner paid a land tax for his field which was not liable to increase or decrease, his payment did not depend upon the cultivation of his field but he paid in any case and whether the field was fallow or not. His tenure was in fact the same as that of the present survey occupant with this difference that by the survey a revision of the tax is made every thirty years while the Miras payment was fixed in perpetuity. The Miras holder was, therefore, in a far better position than the Upri who was a mere tenant with whom a hard bargain was invariably driven.

FULL PROPRIETARY RIGHTS.

The Mirasdar had full rights over his land; he might sell or let it to others and when he died his rights passed to his heir. He was "proud of his situation and was envied among his brethren" and no consideration would induce him to abandon his rights. He stuck to his land in spite of oppression and cruelty and "when we see half deserted villages we find on inquiry that the inhabitants who have deserted are for the most part what are termed Upri tenants or tenants at will; this class differs only from Watandars by having no right to the soil; they come and settle in the village and are permitted by the Patel to cultivate a certain portion of land." A Mirasdar or Watandar as he was more properly called "would sell his house and bullocks or clothes and even bind himself to serve another to ensure the payment of his Sara or tax because it is honorable and respectable in the eyes of his neighbours to preserve his Mirasi lands and when he fails to pay his dues upon them his ruin is considered as decided."

ON FAILURE OF PAYMENT OTHER MIRASDARS BOUND TO PAY THE TAX.

Still by his insolvency he did not forfeit his land for "when the Mirasdar cannot pay his rent the amount of the dues falls on the other

NATIONAL ARCHIVES OF INDIA

Mirasdars should the insolvent Mirasdar remain in the village, but if he should quit the district the others are not called upon to pay the rent, during his absence the Government has a right to make the most of his field and even to let it in lease but for a period usually not exceeding three years and till the expiration of which the Mirasdar cannot claim restitution."

FINALLY LAND LAPSED TO OTHER MIRASDARS.

He or his heir might return at any time within a hundred years and claim the land which must be restored to him and according to another opinion if he died without heirs or left the village permanently "his land became the property of the village unless he returned within thirty years." The general body of Mirasdars had a concurrent right to such lands which they sometimes practised.

In Mr. Chaplin's Report of 1822 there is a passage, para. 121, in which he speaks of the minute division of the Miras lands among heirs and the joint responsibility for the payment of the Government dues. This he calls the *Jatha*. "Each Jatha forms a sort of clanship and on the decease of any one belonging to it without heirs his share devolves to the nearest of kin who is held responsible for the public rent of it and on his failure the whole Jatha or clan is considered answerable. A substantial ryot often occupies the shares, that have fallen in to the surviving stock, of many of his relatives. In this case he is expected to provide for the maintenance of the widows or infants of the deceased incumbents. Even though the surviving members of the clan are too poor to admit of their cultivating the lapsed shares of those who have become extinct they still cling to them with some tenacity and seldom alienate the Miras right except in case of urgent necessity. If utterly incapable of occupying them the officers of Government interfere in procuring their cultivation by Upris or strangers but this is only done when no other resource is left for preventing the loss which Government would otherwise sustain from their lying fallow. Whenever the corporate body of the Mirasdars can conveniently be made answerable this interference is dispensed with." In Satara if a Mirasdar let his land lie waste the other Mirasdars obliged him to pay his rent lest it should fall upon themselves.

PRIVILEGES OF A MIRASDAR.

The Mirasdar also appears to have been exempt from the marriage, house and buffalo taxes. "He has a voice in all the village councils,

NATIONAL ARCHIVES OF INDIA

has a right of pasture on the village commons, can build a house and dispose of it by sale which an Upri is not always allowed to do. On the contrary if the Upri leaves the village his house becomes the property of the township." And the social position of the Mirasdar is such that "he and his wife are entitled to precedence before an Upri in all invitations to marriages, to dinner, and in receiving betel or taking leaves, or on other occasions of ceremony. He can also form a respectable connection by marriage which an Upri can rarely do."

PREEMPTION AMONG MIRASDARS.

The custom of preemption also prevailed among Mirasdars. "In the Akola Pargana of Ahmednagar and probably in many other places the custom prevails of reserving to the relatives of a Mirasdar the first option of being the purchaser. On their declining to buy, the preference is given to the Patels and after them the principal Mirasdars have a priority of claim before the Miras can be disposed of to an inhabitant of an adjoining village or to a stranger."

MIRASI TENURE A SURVIVAL OF TRIBAL UNITY.

The extracts given show that the Mirasi tenure was ancient and general and that cultivation by tenants at will was an innovation. They testify to the social importance of the Mirasdars and his special privileges, such as exemption from certain taxes, also to the tenacity with which the poorest Mirasdar clung to his land, the custom of joint responsibility for the payment of the land tax, the lapse of Mirasi lands to the general body of Mirasdars on failure of heirs, the right of the general body to sell such lands, and the custom of preemption or the right to keep the land among relatives rather than to admit strangers, and also the right to sit in the village council and decide on its affairs. The proper name of the Mirasdar is Watandar and Watan signifies one's own country. In Wilson's Glossary Miras is said to be derived from Varash to inherit and means inheritance or patrimony, but it is doubtful if it may not be derived from *Mir*, Tamil for a boundary. Miras is the portion of the crop given as a perquisite to the holders of a proprietary right in the village lands out of the common stock from the threshing floor. Mirasi is applied in some of the Madras districts to the privilege enjoyed by the holders of Miras lands to hold portions of their estates exempt from assessment and, in almost all, the privilege of receiving portions of the general produce, or money compensation, from the members of the community. In Russia the Mir means the village community. Mirasdar may then be said to be a man of the boundary

NATIONAL ARCHIVES OF INDIA

or village who is entitled to receive a certain part of their crop from strangers who settle there. This would imply ownership of the village by the Mirasdars and may point to the conclusion that they were the descendants of the original founders of the village who would not permit any settlement by a stranger except on condition of payment of rent. Hence the difference in social status of a Mirasdar and an Upri; the one a landlord, the other a tenant. The right to all lapsed shares and to vacant lands was still maintained and the idea of original ownership of the land still kept up. There is no distinct evidence that the land was a coparcenary but the facts of joint responsibility on the default of a sharer and the joint succession to his land in case of his dying without heirs, evidently point to the very probable conclusion that the village on its foundation was tribal property, and that time wrought the insensible change of a division of the tribal property among the large number of families into which the tribe had expanded. Joint responsibility and joint succession are survivals of the primitive customs of tribal responsibility and the habit of never regarding the individual except as belonging to a family or a tribe is a relic of the ancient time. Wilson says that the term Mirasi is used especially in the South of India to signify lands held by absolute hereditary proprietorship under one of three contingencies, one of which was a joint coparcenary tenure in the lands of a village either cultivated in common, or allotted annually, or at some other stated period among the proprietors. This definition must have been given upon authority and would show that Miras lands, which is the general tenure of all southern India, were originally cultivated by village communes with no idea of private property but subject to periodical allotments in the same way as the mark system of Germany. And as all ancient society consisted of companies of blood relations the links in the chain are fairly complete to prove that Mirasi tenure was a development in a direct line of the tribal system, and all its privileges and peculiarities may be explained by reference to the conditions of early tribal property. The Survey system has destroyed the Mirasdar; it took away from him the idea of absolute ownership and put him upon a level with the Upri or mere tenant; the fixed land tax which he used to pay has been changed into a land tax which is revised every 30 years, he must forfeit possession if he does not pay, and his rights over the village common land have been destroyed.

JOINT FAMILY PROPERTY.

In the pastoral state when the tribe became too large and unmanageable the remedy was to divide the tribe; a certain number of

NATIONAL ARCHIVES OF INDIA

families thence forward following a new chief and the rest adhering to the old chief. When the tribes had settled down into villages and the village community had grown to be unmanageable on the system of commonalty, private property would gradually supplant the old system of periodical redivision and community of goods, and each man who had thus kept his land apart for several years would bequeath it to his children. It would be by slow and imperceptible degrees that he would acquire a sense of individual property in the land but while he might dispute the right of the community to dispossess him and bring the land into division he would hardly acquire the idea that he had an exclusive right against the members of his own family. Lapse of time would have made the feeling of kinship with the community too faint to be an active principle. While natural affection for his children, common labor on the same field, dwelling in the same house, and eating of the same dish, would have an active force far greater than the idea of common descent from a remote ancestor. The same idea of property with which the tribe originally worked upon would thus reproduce itself exactly within the limits of the family and the family land would be held on exactly the same conditions on which lands were held by the tribe. The property would lie not in any individual but in the family, there would be no defined share but upon each would be cast the duty of working upon the land and he would possess the right of sharing in the produce. The words *right* and *duty* convey distinct ideas of cause and effect to our minds but in the primitive society such ideas would be dormant. The fact of a man belonging to a family would of itself cause him to join in the common labor, live in the common homestead and eat of the common food. It was not possible to stand alone. The man had no right or duty apart from his family which was governed by the father, who would occupy exactly the same position in the family as the patriarch in the tribe. The father was the manager of the whole property, the family owed him implicit obedience and his power extended to life and death over its members. The joint family is in fact the tribe in minature and is only kept from expanding into a tribe by outward pressure; the family land is hemmed in by the vicinage of the lands of other families and the family is thus limited to a certain development while a variety of causes tends to carve out portions of the property for individual members who separate from the parent stock. When a family from any cause lost its lands but still held

NATIONAL ARCHIVES OF INDIA

together, the earnings of the members would still be subject to those ideas of common property which were prevalent, and even new families would obey the customary practices of the old land families. India is just in this stage of development. Society is composed not of individuals but of joint families and individual property is not the rule but the exception. But a principle has been introduced which is rapidly breaking up these families, and this is that what a person acquires by his individual skill belongs to himself and will not be brought into the common stock, and also by the operation of the law of gifts.

SELF-ACQUIRED PROPERTY.

A member of a joint Hindu family may acquire separate property to his own particular use in which the family will have no right to share. This he might acquire by gift, by superior skill in the arts, or by personal valor, but when the common property has been used and contributed to these acquisitions the property is considered joint and not self-acquired. And so also if the man has received a superior technical education at the cost of the family his gains will be family property and not private. But these rules are apparently being very much relaxed for there is a constant effort at every partition to show that property has been self-acquired and to refine and explain away the share which the use of the common fund may have had in the transaction. The practice of partition, which must be made at the demand of any sharer, is also tending to introduce ideas of private property. Partition is now very frequent and it is rare to see a joint Hindu family which has stood for more than two or three generations. In Bengal the power of the manager of the property to make a gift even of family property seems to be established, it is thought censurable but the act is valid, for as the Hindu lawyers express it, "a fact cannot be altered by a hundred texts." If a father "think proper to proceed by way of gift, embracing as this does, distinct from partition, every species of conveyance and charge, under the construction put upon it that it is valid however improper and that though the giver may be culpable the title of the receiver is good whoever he may be, and under whatever circumstances it may have been created; it being always understood that the giver was the owner of the property under no personal disqualification or disability. Such being the reasoning the father of a family is at liberty to disappoint every expectation, however reasonably entertained, by either alienating his property from it altogether, or by substituting among its members by this mode a distribution wholly different from the one prescribed by

NATIONAL ARCHIVES OF INDIA

the law, so as to have led to the observation that the Hindu legislators might have saved themselves the trouble of providing rules to regulate a father's distribution, if the whole may be evaded by the very easy expedient of calling it a gift instead of a partition."*

ALIENATION OF FAMILY PROPERTY.

The general rule, however, continues to be that any alienation of the common family property must be for the general good and must be with consent of the members express or implied, but the rule was much relaxed even before the British dominion, for Colebrooke writes with reference to a Madras case that "the consent of the sharers express or implied is indispensable to a valid alienation of joint property *beyond the share of the actual alienor.*" This implies that the alienor may sell his share only without consent and Strange observes "when each parcener is considered to have vested in him during the co-partnership a several though unascertained right, as is the case where the authority of Jemuta Vahana prevails, it is clear there may be an assignment before partition; the alienee becoming a sort of tenant in common with the other parceners, admissible as such to his distributive share upon a partition taking place." This is certainly a violent disturbance of the principle of Hindu inheritance that it depends upon the spiritual benefits to be conferred on the deceased, for here we have a stranger to the family succeeding to a share of the inheritance as the representative of the son who had sold his share and who as a stranger is incapable of performing funeral ceremonies for the deceased.

WILLS.

The practice of making wills which has been established in the Presidency towns and in Bengal is also a violent infraction of the theory of joint property of which the father is only the manager and in respect of which he can do no act except for the common good, and yet by will the father may distribute his property unequally; he may leave the bulk of the property to one or more favored sons and provide a scant maintenance for others. Government did no more by the act recognising wills than give a legislative recognition to customs which had grown up and the existence of these customs is evidence to show that the archaic principle of joint family property is fast decaying.

* Strange Hindu Law.

NATIONAL ARCHIVES OF INDIA

PRIVATE PROPERTY MIGHT BE EXTENDED BY LEGISLATION.

The time has perhaps come for Government to give a willing help to extend the principle of private property in all the commercial towns of India by allowing a joint member to alienate his undefined share, or to bequeath it by will, and to require the purchaser or legatee to enforce a partition immediately on the deed or will taking effect. Also to enact that civil decrees or penal fines against a member of a joint family should be enforced by sale of the joint property even to a greater amount than the share of the member, for it concerns the family to save a member from imprisonment, and it is but fair that if the rights and privileges of joint property are to be maintained its obligations should also be enforced, and payment on account of a defaulting member is one of these obligations.

From a state of things in which all the sons jointly inherit the family property in common, to a state in which all the sons inherit in equal shares but not in common, is obviously but a small step and this is the state in which we find Enrope at present and it is the state to which the people of Bengal are striving to attain. The time is one of transition and whenever favorable opportunities occur the members of a joint family put forth their claims to deal independently with their undefined shares, and if successful they disconnect themselves from the parent stock and demand a partition, keeping their self-acquired property to themselves but if unsuccessful they free themselves from liability by declaring that they have no individual property for the satisfaction of their debts. The facilities thus given for fraud and the restraints upon commerce by the feeling of insecurity so produced, are grave evils which the legislature might counteract by timely legislation. A law which would enact that all persons who dwelt within certain commercial areas for a certain time would be subject not to the Hindu Law of inheritance but to a special law which would provide that on the death of a father his sons should share equally and not in common would perhaps meet the difficulty. It would enforce a partition on the death of the father instead of leaving it to chance and caprice. In a short time there would be no ancestral property following a peculiar mode of devolution and the difference between ancestral and self-acquired property would vanish.

PRIMOGENITURE IN ENGLAND.

It has been said that in Europe all sons share equally but England is the exception and there the rule of primogeniture prevails.

NATIONAL ARCHIVES OF INDIA

This rule was introduced for special reasons when great estates generally on the borders of the Empire were given over to some noble to hold as it were with the sword, and the peace of the interior of the country was preserved by the wars and raids which were constantly carried on along the marches. The necessities of the administration required powerful earls with large bodies of retainers to preserve the empire from raids and invasion and if the Earldoms were split up into fragments by the general law of inheritance the object of defence would be defeated. Hence in the grants which were made of such estates the person who should succeed on the death of the Earl was generally indicated and naturally it would be one of the sons of the grantee and the practice after a little uncertainty finally fixed upon the eldest son as the successor. The convenience of this system soon became apparent and the other Barons and Earls to save their fiefs from dwindling away began to copy this mode of inheritance which became the rule on the continent. But the bulk of the people resisted this innovation and maintained their ancient rule of inheritance and in the struggles between nobles and freemen the ancient rule eventually survived. In England, however, the rule of primogeniture commencing with the nobles about the time of Henry I. was copied by the lower orders and finally superseded the old rule. That the rule is harsh in giving the younger sons nothing and all to the eldest son seems, however, to be admitted and it is scarcely adapted to the condition of the commoners although some such rule may be necessary for the preservation of the estates of the Nobility and hence in the latest scientific code of inheritance drawn up for Englishmen who have their domicile in India the equality of all children is recognised and the property is divided equally.

VILLAGE COURTS.

In communities bound together by the ties of kindred and among whom the only distinction is the distinction of wealth, each man would have a personal interest in the affairs of the village and would be entitled to give his opinion, and in the Mark system we find that every freeman had his place in the assembly of the mark which regulates the concerns of the village partnership. "The choice of the meadow the rotation of crops, the allotment of shares from year to year are determined in the council and without its consent no man may settle in the territory, build himself a house or purchase the share of another." This was the business of the village court or markmoot and these functions still survive in the manorial courts in England where the right of

NATIONAL ARCHIVES OF INDIA

the markman to make arrangements for the common husbandry or the fencing of hay fields or the proportion of cattle to be turned into the common pasture is still the custom. It is quite probable that civil disputes and criminal offences were decided in the village court in very much the same way as such matters are now decided in the jamats or caste meetings in India. But as far as our knowledge extends their criminal jurisdiction was more in the nature of Police agency in the pursuit of criminals and the search for stolen goods and civil disputes were decided in the hundred court which was held once a month and to which each town within the hundred sent its Reeve and four best men to be assessors. Each village elected its own Gerefa or Patel and its Beedle or village constable and as every freeman had land the slaves and strangers who had no right to land were required to put themselves under the protection of some land holder who became responsible for their good behaviour and for payment of the fines which they may incur.

WERGILD OR BLOOD MONEY.

Every crime had its appropriate fine and the system of money compensation extended even to the reconciliation of hereditary quarrels; homicide itself could be atoned for by a fine of cattle, the whole house of the slain man joined in accepting it as an indemnity and the breach of the public peace was healed by a fixed share. A sum was placed on the life of every freeman according to his rank and a corresponding sum on every wound that could be inflicted on his person, and for nearly every injury that could be done to his civil rights, honor, or peace, the sum being increased according to adventitious circumstances. The fine was paid to the family because society in primitive times was not a collection of individuals but an aggregation of families, individuals had no rights except as members of families and wrongs done to them were wrongs done to the family to whom compensation was due, and in the same way wrongs done by individuals were wrongs for which the family was responsible. The institution of the wergild placing a fixed price upon each individual was an immense advance upon that state of things when each family avenged the wrongs done to any of its members. The law of retaliation gave place to the law of compensation when men had become sufficiently settled and accustomed to internal peace to resent the disturbance caused by blood feuds between families. The interference of the public to compel both parties to settle their differences without bloodshed is graphically described

NATIONAL ARCHIVES OF INDIA

by Sir Henry Maine. The law suit of the Romans commenced with certain formalities. Both parties are present in Court and the suit is for a slave. "The proceeding begins by the plaintiff's advancing with a rod which as Gains expressly tells us symbolised a spear. He lays hold of the slave and asserts a right to him and touches him with the spear. The defendant goes through the same series of acts and gestures. On this the Prætor intervenes and bids the litigants relax their hold. They obey and the plaintiff demands from the defendant the reason of his interference which is replied to by a fresh assertion of right. On this the plaintiff offers to stake a sum of money on the justice of his own case and the defendant accepts the wager." The wager was put down and went to the State. It is impossible, remarks Sir Henry Maine, to refuse assent to the suggestion of those who see in these formalities a dramatization of the origin of justice. Two armed men are wrangling about some disputed property. The Prætor, who may represent some elder of authority, happens to be going by and interferes to stop the contest. The disputants state their case to him and agree that he shall arbitrate between them, it being arranged that the loser besides resigning the subject of the quarrel shall pay a sum of money to the umpire as remuneration for his trouble and loss of time.

VILLAGE PANCHAYAT.

Civil disputes in an Indian village were usually settled by arbitration before a Panch who sat under a tree or near the village temple or idol, and the first act of the Panch was to take a razinama, or acknowledgment of consent to arbitrate, from the parties who gave two straws in token of submission. These straws may be symbolical of the wager laid before a Roman Court and might represent the produce of the parties fields. They pledged their produce which was their only wealth to abide by the decision of the Panch. Presents were openly given to the Panch for their trouble. The successful man was left to enforce the award which he did by tagadha that is anything from simple importunity to placing a guard over a man, preventing his eating, tying his neck and heels, or making him stand on one leg with a heavy stone on his head in the heat of the sun.

KAFFIR LAW SUITS.

The regular procedure of a Kafir Law suit simulates an expedition in force by the plaintiff and his friends against the village to which the defendant belongs. On their arrival they sit down together in

NATIONAL ARCHIVES OF INDIA

some conspicuous position and await quietly the result of their presence. This is the signal for mustering all the adult male residents that are forthcoming. These accordingly assemble and also sit down within conversing distance. After long silence a conversation ensues and the proceeding, which is a perfectly peaceable one, is continued by a long series of technical formalities and intricate pleadings.

ORDEAL BY BATTLE AND WAGER.

An old Saxon law of king Alfred is also significant. The person who has been wronged may besiege the wrong doer in his house for seven days but must not attack him if he will remain indoors. If he surrenders notice must be given to his friends and relations and he is kept in custody until the compensation is settled. If the plaintiff is not strong enough to capture the wrong doer he should apply to the elderman or king and if redress is not given then he may fight and slay the wrong doer. The ordeal of battle in feudal times was not an invention of that age but apparently a survival of the primitive custom of obtaining redress by force placed under restriction and only allowed after suitable formalities. The ordeal by wager was an advance upon the ordeal by battle and is similar to the Roman custom in a law suit; it pre-supposes a long peace and a strong government which encourages arbitration instead of a resort to force. The ordeal of wager has gradualy developed into the system of Law Courts with Judges appointed by Government and the wager is represented by the judgment debt and the costs of suit.

DHARNA.

The Indian practice of sitting Dharna, or fasting, before a debtor's door is apparently a survival of a much older custom. In the Vyavahara Mayukha the modes of compelling the payment by a debtor are said to be confining his wife, his son, or his cattle, or watching constantly at his door. These modes are evidently means of retaliation and obtaining redress by force; the creditor watches at the door and seizes any of the belongings of his debtor, just as the Saxons besieged the debtor in his house in king Alfred's day. A strong Government soon puts an end to redress in these violent forms but the custom of sitting at the door and making an outcry to compel restitution is common to this day. To sit fasting, and thus to compel the debtor to fast also, is explainable on the ground of a breach of hospitality. In pastoral times when there is abundance of milk and meat it is easy to be generous and hence the habit of hospitality

NATIONAL ARCHIVES OF INDIA

is induced and practised until it becomes a duty of the host and a right of the stranger. The hospitality of the nomadic Arabs is proverbial and among the ancient Germans the rights of hospitality were sacred. They were forbidden to injure strangers who might visit them and who were considered as sacred. Every house was open to them and every one must share his fare with them. Custom demanded that the host should not eat until the guest had been satisfied, and this practice is still current among natives of India where the host moves about among his guests until all have dined and then he may eat. The English gentleman is always served last at his own table. Hence it would be a grave breach of hospitality to eat while there was a man hungry at the door and this would easily harden under the tyranny of custom into a moral prohibition. The Indian creditor unable to obtain redress by other means took advantage of this custom and sat as a stranger at the door of his debtor and fasted; the debtor morally obliged to fast also was soon obliged to give in. In Persia the creditor first sows some barley at the door and sits down in the middle, meaning to express by this form that he will stay without food until he is paid or until the barley grows up. Dharna in India used chiefly to be practised by Brahmans who added their personal sanctity to the weight of custom. The Brahmans wergild as it might be called, the value set upon his life, was so much higher than the life of the ordinary creditor, and the penalty to be incurred in this or the next world so much greater, that Brahmans made a trade of hiring themselves out and fasting on behalf of their principals until restitution was made. Nor is this custom peculiar to India, it existed in Ireland. There too custom and Government had endeavoured to throw obstacles in the way of men obtaining redress by violence, the creditor was required to give warning to his debtor that he would retaliate by seizing his goods if he did not pay by a given time, but upon persons of distinction against whom the poor man had no power to retaliate the Irish law provided that "Fasting precedes distress in their case. He who does not give a pledge to fasting is an evader of all, he who disregards all things shall not be paid by God or man."*

LAW OF DISTRESS.

The laws of distress, of attachment before judgment, and of impounding stray cattle are likewise developments of the practice of

* Early Hist. of Institutions, p. 297.

97160

NATIONAL ARCHIVES OF INDIA

obtaining redress by seizure of a debtor's property including his women and children. As the Government grew stronger, and the administrative machinery became more perfected, restrictions were imposed upon the free exercise of the right of obtaining redress by force, and rule after rule was made until the exercise of the right became so hampered by the rules that it slowly fell into disuse from the fear of the penalties which might be incurred by the infraction of rules. Blackstone has remarked that "the many particulars which attend the taking of a distress used formerly to make it a hazardous kind of proceeding for if any one irregularity was committed it vitiated the whole." He who committed any irregularity failed altogether. The right of the individual has been thus gradually transferred to the Government, but the right to seize cattle doing damage, and to pursue a thief and retake property stolen, are still enjoyed by individuals and is recognised by the law.

MONEY COMPENSATION FOR CRIME.

To return to the practice of common responsibility for crimes. It follows as a matter of course that where there was no individual and separate property the fines which it might be necessary to pay on behalf of one of the tribe, or of the joint family, would be paid from the common stock and to the kindred or joint family of the deceased when the fine was for a life price or wergild. This was the practice of the Germans as described by Tacitus and the duties of the kindred in England are described by Stubbs; "the megth share in the wergild paid for their slain brother and contribute to the payment for one whom their brother has slain, they are the legal compensators for one another in accusation or defence, they are bound to protect their kinsman in his minority, to seek a lord and find a house for him if he is lordless or homeless." In the ancient Irish Law Tracts there is a passage that retaliation prevailed in Erin before the time of St. Patrick who taught forgiveness and the custom afterwards was to keep between forgiveness and retaliation. "No one is put to death for his intentional crimes so long as eric fine is obtained and whenever eric fine is not obtained he is put to death for his intentional crimes and placed on the sea for his unintentional crimes." That every crime, even murder, could be compensated by a fixed fine must after a time tend to great abuse when wealth has

NATIONAL ARCHIVES OF INDIA

increased, and wealthy men may with impunity commit crimes by payment of fines which would not be felt as a loss, and hence on the conquest of Ireland by England we find the English Rulers expressing abhorrence at eric fines and declaming against them as contrary to God's law and man's, utterly unconscious that the same practice had prevailed in early England and had died out some time after the Norman conquest. But inadequate as the system of pecuniary compensation may be in a wealthy community it is of infinite value at a period when life is held cheap, when violence and retaliation are the rule and when money and cattle were of much more account than human life. These fines must originally have acted with crushing severity until the progress of wealth and the greater sanctity of life put them out of date.

LOCAL RESPONSIBILITY FOR CRIME.

This custom of family responsibility for the offences of their kindred appears to have survived in the practice of punishing the whole family for certain offences such as treason and in the disgrace which even now falls on a family for the offence of one of its number. The blood of the family was considered as tainted and banishment and forfeiture of the whole property was a necessary consequence. The custom that every landless man must have a lord grew up from the primitive custom that every freeman had a right from his relationship to the tribe to the possession of land while strangers and slaves had no such right and were permitted to occupy on sufferance only. As all privileges and duties were confined to members of the tribe the tribal custom could take no direct notice of strangers except through some of the tribe, the slave owner was thus responsible for the slaves, and strangers were required to find some freeman who would undertake to be their surety. The possession of land was the index of freedom but after the establishment of separate property, cases occured when freemen had no land and they were then treated as strangers without land and required to find a surety. In return for the patronage afforded the Patron received certain services and dues from his client and exercised some control over him.

This custom was fixed as a law by Athelstan and confirmed by Edgar. Canute the Dane also enacted it and decreed that the hundred should be divided into ten parts or tithings, and that every man should

NATIONAL ARCHIVES OF INDIA

have his place in a tithing. This was apparently devised for the convenience of Police administration since there was an obligation upon the hundred and the tithing to pursue and capture thieves. Edward the Confessor fused these customs together, "all men are bound to combine themselves in associations of ten to which the name of frith borh is given in the South and that of tenmanetale in the North of England. Each association has a head man, a capital pledge, borh elder or frith borh head to manage the business of the ten. Thus instituted they are standing sureties for one another; if one break the law the other nine shall hold him to right; if they cannot produce him, the capital pledge with ten of his fellows, and the head men and two others out of each of the three nearest frith borhs, are to purge their association of complicity in the flight of the criminal or to make good the mischief he has done." The practice of making the hundred responsible continued after the Norman conquest, with this amendment that a person found slain within the hundred was presumed to be a Norman and a heavy fine levied from the hundred unless they could prove that the deceased was an Englishman.

VILLAGE RESPONSIBILITY FOR CRIME IN INDIA.

Turn to the description of the village police in India to be found in Elphinstone's Report. "The Patel is responsible for the Police of his village, he is aided by his Kulkarni and Changala and, when the occasion requires it, by all the inhabitants." The Mahars or Jaglyas and Dhers are the village watchmen and detectives, and in the event of a theft committed within the village bounds it is their business to detect the thief. It is very common for them to track a thief by his footsteps and if they do this to another village so as to satisfy the watchman there, or if they trace the property to an adjoining village, their responsibility ends and it is the duty of the watchmen of the new village to take up the pursuit. The last village to which the thief has been clearly traced becomes answerable for the property stolen which would otherwise fall on the village where the theft was committed. The watchman is obliged to make up this amount as far as his means go and the remainder is levied on the whole village. Elphinstone remarks on this practice that if the great secret of Police be to engage many people in the prevention and punishment of crime it will not perhaps be easy to find a measure more advisable. It was adopted by our own early law-

NATIONAL ARCHIVES OF INDIA

givers and is not less suited to the state of society in India, than it was in England under Alfred. This custom was legalised by Regulation 12 of 1827 and is still in force.

CONCLUSION.

We have thus been able to see how great a part the idea of blood relationship has played in the formation of early groups of society. Wherever we look the first indications of social life begin with the family group gradually expanding into the tribe and we see with what suspicion and distrust one tribe regards another as an alien tribe, as something more cruel and cunning than wild beasts and to be guarded against accordingly. The Jews divided into twelve tribes trace their origin to twelve brothers. The German tribe settles in a village and makes a dismal waste round it to protect itself from surprise. As some central authority grows up and social life becomes less suspicious, strangers are admitted into the village but admitted jealously and kept down under hard conditions and aloof from the life of the men of pure descent. We see this custom still surviving in England in the local manor courts and in the custom of admitting stranger settlers. In Russia similar practices are observed. In India the same isolation of tribes in villages is visible and the same jealousy of the stranger who cannot be admitted into the commune villages without consent, in the right of preemption among villagers, the obligation to sell to one of the tribe before a stranger and the privileges of the older settlers, the Mirasdars, the Bhagdars and others, over strangers. In Rome the citizens of the victorious city were tenacious of their privileges and dignity, and grudgingly admitted strangers to these privileges. To be a citizen of Rome was to be of kin to the descendants of a long line of heroes and the dignity carried with it its proper privileges. We see the power of the Roman father over his family and his slaves to be the same as the power of the German and Hindu father. Everywhere we see tribal property with its periodical divisions gradually fading into private property, in Western Europe the change completed, in Eastern Europe and in India the change still progressing and in almost every stage of development, from the advanced position of the Bengal provinces to the partial communes of Oudh and Guzerat and the almost primitive condition of parts of Arcot and of North Guzerat. In every German mark, and in every Indian village can be observed the equality of all men of pure descent, and the introduction of slaves and strangers introduced the first idea of difference of rank as

NATIONAL ARCHIVES OF INDIA

indicating difference in descent. The introduction of private property produces differences in wealth and wealth becomes the origin of nobility among Germans and Celts but among Hindus nobility attaches itself to the idea of a warrior caste, the Kshatryas, and still more to a privileged priesthood, the Brahmans. In its criminal practice too the joint responsibility of the Indian village for thefts traced to it is the same as the joint responsibility of the tithing and the hundred to pay for the offence of any of their number, while everywhere in Europe and India the succession to the family property is strictly equal among the sons, England alone forming the exception by adopting primogeniture, a practice copied from a military rule. These similarities and resemblances are not accidental; they point to the identity of Hindu and European customs and families which although widely branching and far apart must at some far off time have had a common origin derived from a common ancestor.

NATIONAL ARCHIVES OF INDIA

NATIONAL ARCHIVES OF INDIA

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